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OVERSIGHT OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES

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OVERSIGHT OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES

TUESDAY, MAY 11, 2010

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, Pursuant to notice, at 10:07 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feinstein, Franken, Sessions, Hatch, and Cornyn.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. OK. I am glad to have the Director with us today. Actually, Director, this is your first appearance before the Judiciary Committee since your confirmation. I appreciate your being here. You made it very clear at the time of your confirmation you would appear, and I appreciate that.

The U.S. Citizenship and Immigration Services (USCIS) is a principal administrator of our immigration policy. It is charged with determining who is eligible for a wide range of visa categories. It ensures that those who are deemed eligible for an immigration benefit have not filed a fraudulent claim and do not wish do us harm. The agency allows family members, foreign students, artists, athletes, and investors, among others, to enrich our economy but also enrich our culture. And, most significantly, it makes it possible for immigrants like my grandparents to realize their dreams of U.S. citizenship. This agency is the face of our National immigration system. Its efficient administration of rules and standards is crucial to keeping our system strong and viable.

It has a tremendous responsibility, as do all of the men and women who adjudicate visa petitions. As Director, you make sure it provides high-quality service. And if I might be a tiny bit parochial, I am proud to say that Vermont is host to one of four National visa processing centers in the United States. The employees at the Vermont Service Center carry out their duties with conviction and tremendous care, and I want to recognize their excellent record. I have gone by to visit them many times. I would invite you to come and visit, Director.

I have long supported the EB-5 immigrant investor visa, and in particular the EB-5 Regional Center program, something that Senator Sessions and I have discussed before. The EB-5 program brings significant amounts of capital to regions of our country that

face economic challenges, and it creates jobs for Americans. Entrepreneurs in Vermont have used this program to revitalize businesses. They have provided economic benefits and job creation across our regions. In fact, I intend to soon introduce legislation to modernize the program. I want to make the program permanent. And my bill will ensure that as this program grows, it remains free from fraud or abuse.

The USCIS implements the United States' humanitarian policies. I commend your swift actions to implement Secretary Napolitano's announcement that the U.S. would grant temporary protected status for Haitians after the recent earthquake, and I hope you are generously providing fee waivers for eligible temporary protected status applicants. In this same spirit of humanitarian aid, I worked with Senator Lugar on the Return of Talent Act that would allow lawful permanent residents to return to their home countries to assist with reconstruction following a natural disaster or armed conflict, without penalizing a future application for citizenship. It does not seem right that we tell them they cannot leave here to go out and help out a devastated country and have it somehow work against them. And if enacted, I think this legislation could be a terrific help to Haiti's recovery.

You fulfill our country's historic commitment to refugees and asylum seekers, and I have recently introduced two bills, the Refugee Opportunity Act and the Refugee Protection Act, to strengthen United States' protections for asylees and refugees. I look forward to working with you on that.

I know that Senator Sessions, as so often happens, is supposed to be in five places at once, and I will yield to him.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman, and I do have the hearing on the oil spill that is threatening our Gulf Coast in the Energy Committee of which I am also a member.

Mr. Director, thank you for being with us. You bring a good spirit and hard work to this job, and you oversee all the lawful immigration into America. Last year, we lawfully admitted 1.1 million people into the United States, and USCIS approved each one of those.

We are one of the most generous Nations in the world with regard to immigration, and we want to continue to be welcoming to those who avail themselves of our laws by coming here lawfully and who will and have the ability to contribute positively to our country.

Unfortunately, as we have seen twice in the last month, the United States continues to be a target of terrorist activity, and many of them are getting more sophisticated in their efforts. Visa fraud has been rampant in the student, marriage, fiance, and religious worker categories, and we must ensure that the integrity of the background checks and investigations are not sacrificed for the expediency of just reducing the backlog. We have too big a backlog. I know you are working at that. But we have got to also maintain integrity in the system.

As you know, Mr. Shahzad, who was arrested last week in connection with the failed bombing attempt at Times Square, though we are still gathering information on him, we know that he was sworn in as a United States citizen just April 9th last year, even though he had previously appeared on the Traveler Enforcement Compliance System and had come under scrutiny of a local Joint Terrorism Task Force in 2004. He was able to obtain citizenship, however, because he married a U.S. citizen who petitioned on his behalf. In a report released in May of 2002, Steven Camarota, Director of Research at the Center for Immigration Studies, found that between 1993 and 2001, 48 terrorists had been charged, convicted, pled guilty, or admitted to involvement in terrorism within the United States. According to Camarota's study, at the time they committed their crimes, 16 were in the United States on temporary visas, 17 were lawful permanent residents, 12 were illegal aliens, and 3 had applications for asylum pending. Though there is still much information to be gathered on this matter, it appears that he, too, may have gamed the system in order to become a naturalized citizen.

As Michael Cutler, former Special Agent with INS for 30 years, said, "Immigration benefit fraud is certainly one of the major dots that was not connected prior to the attacks on September 11th and remains a dot that is not really being addressed the way it needs to in order to secure our Nation against criminals and terrorists."

So we would like to inquire about that. I will not be able to stay through the whole hearing but will be submitted some written questions on those issues.

I am also interested in hearing how it is that it seems that your agency has ceded E-Verification program integrity to the Civil Rights Division. I am not sure that that makes sense to me as a way to manage the system. I believe you should be in charge of it, and if violations occur, then they should be investigated. But I do not understand that process. So E-Verify works. It is bringing some integrity to the workplace. It is not perfect, but it does help, and it is something we should be supporting and not restricting.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Alejandro Mayorkas is the Director of United States Citizenship and Immigration Services. Immediately prior to becoming the Director of USCIS, he was a partner in the law firm of O'Melveny & Myers, and previously served as U.S. Attorney for the Central District of California—in fact, confirmed by this Committee for that—and prior to that was Assistant U.S. Attorney in the same office. He has had years of service both in the private sector and in the Government sector, and we welcome him here today. Please go ahead, sir.

STATEMENT OF ALEJANDRO MAYORKAS, DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. MAYORKAS. Thank you very much, Chairman Leahy, Ranking Member Sessions, members of the Committee. I am privileged to appear before you today to testify about the state of U.S. Citizenship and Immigration Services.

It has been nearly 11 months since I appeared before this Committee for my confirmation hearing. At that time I spoke of my deep understanding of the gravity as well as the nobility of the USCIS mission to administer our immigration laws efficiently and with fairness, honesty, and integrity.

In the midst of the challenges we face today, my understanding has only deepened. We are a Nation defined by and one whose success depends upon being both a nation of laws and a nation of immigrants. With tremendous pride as a naturalized citizen, a former United States Attorney, and the current Director of USCIS, I work alongside 18,000 men and women who give so much of themselves as together we seek to reaffirm our Nation's history and embrace its future as the world's beacon of hope and opportunity for generations to come.

Almost 11 months ago, I promised you I would conduct an overall review of the agency. I have done so, and as a result, I have realigned the agency's organizational structure to reflect our priorities and more efficiently and effectively achieve our mission.

I created a new Fraud Detection and National Security Directorate focused on preventing, detecting, combating, and deterring threats to our public safety and fraud in our system. Together with our Federal partners and others, we have a multilayered system in place to ensure those applying for benefits do not pose a security threat or defraud the system. We collect fingerprints, conduct name checks, screen individuals for criminal activity, and scour applications for inconsistencies, security concerns, and good moral character. Continuing to uphold and strengthen these safeguards with the utmost vigilance is critical to ensuring the integrity of our immigration system.

Our newly established Office of Public Engagement is working to ensure we develop and solidify our partnership with the public we serve as we review our policies and consider needed process improvements. We are institutionalizing how we keep our partners fully informed of the issues we confront, and we are dedicated to meeting our challenges together with them.

Our new Customer Service Directorate is developing new ways to communicate with and serve the public. We are building on best practices in the public arena and the private sector so that we can become a model of service and efficiency.

This week, we are issuing a redesigned Permanent Resident Card, commonly known as a green card, which includes some of the most sophisticated security technology available to us today. The previous green card was designed and placed into service in 1998, and only minor changes have been made to it since then. Our new card includes additional security features, including embedded data and holographs, that make it more difficult to counterfeit and easier for DHS to identify fraud.

We at USCIS are working hard to build a stronger and brighter future for our agency and for the public we serve. The public's demands and expectations of us and the questions and issues you raise help define our goals and aspirations. I look forward to working with this Committee and answering your questions as best I can.

Thank you for the opportunity.

[The prepared statement of Mr. Mayorkas appears as a submission for the record.]

Chairman LEAHY. Thank you very much.

Director, I am drafting legislation to modernize the EB-5 Regional Center Program. I am a strong believer in EB-5 because I have seen how well it has worked in my State.

Now, one of the issues I hear from stakeholders involves the economic aspects of the program. Some stakeholders have expressed frustration that when an investor petition is being adjudicated by USCIS, the adjudicators look at both the petition and the business plan attached to it. That can cause a lot of delays. I think we can promote efficiency and predictability if regional centers are able to seek agency preapproval for a business plan in which investors could then become involved. It would allow the agency to divide the adjudication task between economic experts who would review the business plan and immigration experts who would adjudicate the investor petitions.

Do you agree that if you separated the business plan approval process from the petition adjudication process, you could have more consistent and careful review of business plans?

Mr. MAYORKAS. Senator, thank you for your question with respect to the EB-5 program, to which I have given a great deal of attention. I recognize its economic benefits. We would welcome the opportunity to consider the possibility of preapproving business plans and applications to establish regional centers. We understand the benefit that a regional center determination can have on future EB-5 applications.

I do want to say that we have taken a number of discrete steps to improve our EB-5 adjudication process. Most notably, we have concentrated expertise in one location where all EB-5 applications are submitted for our review and consideration. Also, in response to public concern about the time it takes to review and adjudicate those applications, we have cut the application processing time by approximately 50 percent. It used to take approximately 8 months to adjudicate an EB-5 application, and our cycle time is now approximately 4 months.

Chairman LEAHY. My concern is obviously you have to look at the immigration question, and you do not want fraud in it, although what I have seen on these have been very legitimate business people that were trying to raise capital through the Regional Center Program. And I just do not want the whole thing being looked at as just one single issue instead of breaking it down into its component parts to address it in a more efficient way.

When we set up the Regional Center Program, Congress intended it to have flexibility to accommodate the realities of business, including unforeseen delays that occur through no fault of the investor, especially these days where the stock market goes up and down, and the availability of capital ebbs and flows probably more than we would like. But if you have an investor and a domestic business person acting in good faith, I hate to see the investor suffer the denial of a green card.

So would you commit to have your department and your office and mine work together to see if we can find ways to make the whole process more efficient?

Mr. MAYORKAS. I most certainly will, Mr. Chairman.

Chairman LEAHY. Thank you.

Now, on another, this is somewhat parochial. The dairy industry is not eligible to participate in the H2-A agriculture visa program. I am going to introduce legislation to ensure that dairy can participate in the H2-A program. I strongly support the ag jobs legislation, which would reform the overall H2-A program. I realize DHS and USCIS do not play a direct role in determining eligibility of H2-A workers. But do you have any objection to a change in the statute to clarify that dairy is eligible for the H2-A program?

Mr. MAYORKAS. Mr. Chairman, we have been aware that dairy workers have not been eligible for the H2-A program merely by virtue of the fact that their work is not defined as seasonal under the current legislation, and we are aware of the articulated need to redress that situation.

Chairman LEAHY. Thank you. And, of course, I mentioned, as you know, the Vermont Service Center in my opening remarks. I do hear very positive things from people about their work. As I said, I have gone and visited it on different occasions. I think it is a great example of a successful partnership with the Federal Government. I would like to see Vermont and USCIS continue to develop this positive relationship. Can we work together with Vermont officials and your department to encourage that partnership?

Mr. MAYORKAS. I would welcome the opportunity, Mr. Chairman. I should note I had the pleasure and the privilege of visiting all of the employees in the Vermont Service Center a few weeks ago, and the accolades they receive are richly deserved.

Chairman LEAHY. Thank you. And they appreciated that, let me tell you.

Mr. MAYORKAS. Thank you.

Chairman LEAHY. One of the very important visas the Vermont Service Center handles is the Violence Against Women self-petitions, as you know, helping immigrants who are in an abusive situation to seek protection from the Federal Government for independence from an abusive spouse or parent. I understand USCIS is in the process of improving the training program for these VAWA adjudicators. I am sure the petitions are handled in total confidentiality.

How is that training going?

Mr. MAYORKAS. Mr. Chairman, that is going very well. Once again, the experts of the Vermont Service Center do an outstanding job of adjudicating the T and U visas that address the dire situation to which you refer. We are very proud of their leadership, not only in executing our adjudication guidelines but in developing them and training others to share their expertise.

Chairman LEAHY. Thank you. And, finally, the man charged with being the Times Square bomber, Faisal Shahzad, entered the U.S. from Pakistan on a student visa, then he got a work visa, then he applied for a green card, and eventually he was naturalized. What are the background security checks he would have undergone at each point? Was there information in the file that should have been caught as USCIS was reviewing his application? I realize it is one thing to look at it in hindsight, but what does your review show?

Mr. MAYORKAS. Mr. Chairman, I am constrained, regrettably, by privacy rules on commenting on the Shahzad file specifically, but I can speak about the process that we as an agency follow with respect to the security and background checks that we perform.

Our anti-fraud and our national security preventive measures are extremely robust, and their importance has only been elevated since I assumed the leadership of the agency. We conduct FBI fingerprint checks. We conduct checks of databases, including the TECS database. We employ the FBI background name checks. We scrub the application itself. We interview the applicant. We work collaboratively with our law enforcement partners and our intelligence community partners in ensuring that each application is carefully scrubbed and scrutinized to ensure that fraud in our system or a peril to our National security are not effected.

Chairman LEAHY. Thank you very much.

Senator Hatch.

Senator HATCH. Well, thank you, Mr. Chairman. Welcome. We appreciate having you here. I want to thank Dianne Feinstein for recommending you in the first place. I think you are an excellent public servant, and we are very close, and I think a great deal of her recommendations.

Mr. MAYORKAS. Thank you, Senator.

Senator HATCH. A few years ago, my office worked closely with Federal immigration agents to break up one of the largest marriage visa fraud rings in the country. As a result of the 18-month investigation called Operation Morning Glory, 24 individuals were indicted on 79 counts, including conspiracy, alien smuggling, mortgage fraud, and aggravated identity theft.

Now, let me say this: I do not believe that all foreigners who marry Americans are simply looking for a one-way ticket to the United States, but I continue to have concerns about the prevalent abuses in our country's marriage-based green card program. Now, it could easily be called the soft underbelly of our country's visa program.

I often hear from my Utah constituents of situations where either they or someone they love has been deceived by a foreign national who is committed to the marriage only until they are able to remove their conditional resident status. Once their temporary status is legally changed, however, some disappear, often leaving their spouses with serious financial and familial obligations.

Now, is it true that USCIS officials rely almost exclusively on documents, records, and photographs with little opportunity for interviews or investigations of the petitioner?

Mr. MAYORKAS. Senator, our process of detecting and deterring marriage fraud is far more robust than that. As part of the elevation of the Fraud Detection and National Security Directorate earlier this year, one of the things that we are doing is bringing increased attention to our Benefit Fraud Compliance Assessment Program. One of the areas that we will be focused upon in that renewed assessment and review process is on the marriage fraud issue. I would be pleased to report those results to you once our study is undertaken and completed.

Senator HATCH. I am glad to hear that. Is it true that once a fiance or K visa petition is approved, it requires quite a high evi-

dentiary standard in order for a consular officer overseas to refer a petition back to USCIS for revocation?

Mr. MAYORKAS. Senator, I am not equipped today to answer that precise process question.

Senator HATCH. You will let me know.

Mr. MAYORKAS. If I may take the opportunity to respond subsequently.

[The information referred to appears as a submission for the record.]

Senator HATCH. What about couples who meet over the Internet? Are there cases where visa petitions have been approved for couples who have never physically met or who have only met once or twice?

Mr. MAYORKAS. Again, Senator, I would like to take the opportunity subsequent to this hearing to provide you with a detailed report of how we address marriage fraud.

Senator HATCH. That would be fine. I appreciate that.

Last year, in response to my questions about marriage fraud, DHS Secretary Janet Napolitano said, "There is a perception that marriage fraud is a rampant problem in the immigration system, but most marriages coming before USCIS are bona fide."

Does USCIS maintain any statistical information on foreign nationals who leave their spouses once they obtain permanent residency?

Mr. MAYORKAS. That is one of the very questions, Senator, that we will be asking in our Benefit Fraud Compliance Assessment of the marriage fraud.

Senator HATCH. We would like to see that. As you know, I want to always be fair to people, and I appreciate what you are doing.

On the ARTS Require Timely Services, the ARTs Act that both Senator Kerry and I are sponsors of, nonprofit arts organizations throughout the country, including many in Utah, engage foreign guest artists in their orchestras, theaters, and dance and opera companies. Unfortunately, years of delays, errors, and unpredictability have forced some U.S.-based nonprofit arts organizations from even trying to bring international artists into the United States.

Now, it is my understanding that there has been a rash of unreasonable requests for evidence, or RFEs, from the California Service Center that add to the delay in processing visas, including O and P visas. Now, I am concerned that these RFEs do not adhere to the statutory and regulatory standards for determining the qualifications of O and P applicants. I understand that a broad review of adjudication procedures is underway, but in the meantime, our Nation's cultural interests are being hindered.

Would you care to comment on that and tell us what you might do in that situation?

Mr. MAYORKAS. If I may, Senator—

Senator HATCH. And whether you can support what we are trying to do, Senator Kerry and I.

Mr. MAYORKAS. I appreciate your efforts and those of Senator Kerry. Senator Hatch, the concerns that you expressed with the O and P visa process are concerns that we have heard articulated by the public that we serve. A number of weeks ago, I appeared in the

California Service Center to host an engagement session with the community nationwide to hear their concerns with respect to the Requests For Evidence that we propound with respect to O and P visa applications. We are poised to implement procedural improvements to address those concerns.

In addition, just yesterday, we published in draft form a new O visa guidance memorandum to our field adjudicators. We did so in draft form so the arts community and other interested communities could have the opportunity to provide comments to us whether the guidance that we intend to promulgate indeed addresses their concerns and serves that community well. So the concerns that you expressed are concerns that are driving our agenda in the O and P visa arena.

Senator HATCH. Well, thank you, and I appreciate your comments on that. I have to comment that we have worked very closely with your service, and we really appreciate all the help that we have received over the years. We want it to work well. We want you to be pleased with what we do. But we get an awful lot of constituent work and case work in these areas. And it means a great deal to me, the kindness with which we are treated, and the help and cooperation that we have. I appreciate it.

Just let me ask one last question. Last year, I included an amendment in the Homeland Security Appropriations Act that extends for 3 years the Special Immigrant Non-minister Religious Worker Visa Program. Pursuant to the enacted legislation, DHS is required to produce a report on the program. Could you give us some idea when we might expect to see that report? And I hope we can continue that because these are good people who really do a good job, and they are religious workers, and I would like to see us approach this in a very, very good way.

Mr. MAYORKAS. If I may have your indulgence, Senator, to respond subsequently to the timing question of the report. I am not aware of its timing.

Senator HATCH. I understand, and you sure have my indulgence.

I want to again thank you for the work you are doing and the people around you. We are very appreciative, and I know you are sensitive to the feelings of people who have these problems, and that means a great deal to me.

Mr. MAYORKAS. Thank you, Senator.

Senator HATCH. Thank you.

Chairman LEAHY. Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman, for this hearing. Thank you, Director Mayorkas, for coming here today. As the Ranking Member said, we are one of the most generous countries in the world in immigration. Most people do not know this, but the U.S. consistently takes more refugees than most industrialized countries combined. And I am proud to say that my State, Minnesota, consistently welcomes more of those refugees than almost any other State. And I want to thank you especially for what you do for refugees and asylees.

I want to talk about the time it takes for family members of green card holders and citizens who come in. Right now green card holders wait 4½ years to bring their husbands, wives, and minor kids to the U.S. Citizens wait about 6 years to bring their unmar-

ried adult children here. It is even longer for some countries, as you know. From the Philippines, for example, that wait can be up to 16 years.

Now, I cannot imagine not seeing my family for a month, although some of our troops overseas do not see their families for as long as a year. But I cannot imagine waiting 16 years to see your family. Do you think that these long waits are creating a disincentive to enter the country illegally—or a disincentive to enter the country legally, rather, and an incentive to enter it illegally?

Mr. MAYORKAS. Senator, I appreciate the question. We have heard a great deal about the waiting times for family members of legal permanent residents, and that is, of course, a function of visa availability.

I must say that I have not given thought to whether long waiting times have a causal connection to illegal immigration in this country, and I would be hesitant to suppose an answer to such a serious question.

Senator FRANKEN. What can we in the Senate do to—because I know you are operating on the laws that we pass. What can we in the Senate do to help reduce these backlogs?

Mr. MAYORKAS. Senator, the issue of visa availability and visa use is something that is within the purview of legislative reform.

Senator FRANKEN. Yes, that is what I meant.

Mr. MAYORKAS. Yes. Well—

Senator FRANKEN. I mean, you are sort of answering my question with a statement that my question is valid, but what I want to know is what can we do. I am not asking you to make recommendations—or maybe I am, what can we do to reduce these backlogs?

Mr. MAYORKAS. Senator, first of all, allow me to apologize for my initial answer. I did not mean to repeat your question by way of a declaratory statement. If the Senator is interested in actually our best thinking on the subject, then I would like to speak with the subject matter experts within my agency and our department and circle back, Senator.

Senator FRANKEN. OK. That would be great, and we can get that in writing or get a briefing.

In 1996, Congress barred people from applying for asylum after 1 year of their arrival. In other words, if they had been here a year, they could not apply for asylum unless they could show extraordinary circumstances prevented them from doing so or that circumstances had changed in their country of origin. This law has forced judges to deny asylum to pro-democracy activists, religious leaders, and victims of torture even after they found that they would be harmed if they returned to their home country. They just did not have an extraordinary excuse. Do you think we should change or do away with this standard?

Mr. MAYORKAS. Senator, I know that there is legislation, I believe, that has been proposed to eliminate that 1-year waiting period.

Senator FRANKEN. It is not a waiting period. It is a period after which you cannot apply anymore for the asylum.

Mr. MAYORKAS. Correct, and I know that our subject matter experts are considering that provision, and I would really defer to

their judgment and their continued analysis, and similar to the prior question, I would welcome the opportunity to brief you on their thinking subsequently.

Senator FRANKEN. OK. Thank you. We will do that, again, afterwards.

An advocacy group in Minnesota told me a story that I want to share with you. A woman from Nepal recently came to them to seek asylum in the U.S. because Maoist insurgents had kidnapped her son. Now, she ultimately decided not to apply for asylum because under current law she would be inadmissible because of her—she is considered a supporter of terrorists because she paid her son's ransom. Do you think there is a place for a duress exemption or exception in such a case?

Mr. MAYORKAS. Senator, while I cannot comment on that case specifically, I do want to note that within, I believe, the first 2 months of my tenure as Director, I had the privilege of visiting our office in St. Paul and meeting with the advocacy community there to understand their concerns. But there is a Supreme Court case that leaves it to the Department to exercise its discretion in finding a duress exemption that might not otherwise apply, and I believe we are utilizing that exemption on a case-by-case basis.

Senator FRANKEN. Oh, well, that is nice to know. Thank you very much, Mr. Director.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Senator Cornyn.

Senator CORNYN. Good morning, Mr. Director.

Mr. MAYORKAS. Good morning, Senator.

Senator CORNYN. Thank you for coming. I wonder if you could comment on—I guess at this point there are discussions that we are hearing reported about the use of parole, which is, I understand, a discretionary judgment made by you and perhaps the Secretary of Homeland Security to use parole on an expansive basis to legitimize the presence of people who have entered the country with a visa and overstayed the visa actually the correct term is “deferred action”—use some means to allow people who have come into the country legally but have overstayed or some other category of person who is here without proper legal authorization to stay in the United States. Are there any discussions within your agency or at the Secretary of Homeland Security level to use deferred action to change the status of people in any of these categories?

Mr. MAYORKAS. Thank you, Senator. Our use of deferred action and humanitarian parole are utilized on a case-by-case basis when a significant public benefit or extreme hardship would so warrant. I am not aware of any sweeping determination to move from the case-by-case analysis to a categorical framework. And so I am not exactly sure of the concern that I think underlies your question.

I will say that we are particularly focused on using our discretionary authority when it pertains to the spouses of our service members in the military by virtue of the public benefit that we achieve in that way.

Senator CORNYN. Well, I appreciate your answer, and so if I can summarize, you are aware of no discussions to use deferred action

or humanitarian parole on a categorical basis as opposed to a case-by-case basis?

Mr. MAYORKAS. That is my understanding. Yes, sir.

Senator CORNYN. I understand that Senator Durbin and Senator Lugar wrote a letter to you about this topic on April the 21st. Do you recall that letter?

Mr. MAYORKAS. I do not as I sit here.

Senator CORNYN. Well, I am sorry to pop it on you, but maybe you could take a look at that. I would be interested in, first of all, whether you have responded to the letter. We are not aware of a response, but I would be interested, if you have responded, to get a copy of that response and to learn of your views.

So, again, you are not aware of any discussions, any deliberations with regard to the categorical use of deferred action or humanitarian parole as opposed to the case-by-case determination process that you describe. Is that correct?

Mr. MAYORKAS. Senator, I am sorry. I may have misunderstood your question. The question that you pose, is it: Are we utilizing those mechanisms on a categorical basis as opposed to a case-by-case basis? I know of—

Senator CORNYN. I am asking not just are you, but are there any discussions or plans to do so?

Mr. MAYORKAS. I do not know of any plans. I think we have discussed, as we always do, the tools available to us and whether the deployment of any of those tools could achieve a more fair and efficient use or application of the immigration laws. So I would hesitate to say that we have never or we are not at all considering the use of deferred action or humanitarian parole on an expanded basis. I think we consider the tools available to us on an everyday basis.

Senator CORNYN. Let me give you some more precise examples. For example, children who might otherwise benefit from passage of the DREAM Act or individuals that might be covered by any potential AgJOBS sort of immigration legislation, have there specifically been discussions in your agency or in the Administration that you are aware of dealing with the use of deferred action with regard to either of those categories of individuals?

Mr. MAYORKAS. I believe that we have discussed those issues and just about every issue that comes within the purview of the immigration system when it comes to the tools available to us and the application of the laws that Congress has passed.

Senator CORNYN. But to use your terminology earlier, heretofore those have been done on a case-by-case basis, correct? And to do so on a categorical basis would represent an unprecedented use of those authorities, wouldn't you agree?

Mr. MAYORKAS. Whether it is unprecedented or not, I cannot comment, but it certainly would be a deviation from the case-by-case application of those discretionary authorities.

Senator CORNYN. Well, by the use of "unprecedented," in other words, it has not happened before. It has never been used for that purpose before. Correct?

Mr. MAYORKAS. I am not aware of that.

Senator CORNYN. OK. Fair enough.

Now, when I was in El Paso recently, I learned that as a result of the humanitarian parole practices of the U.S. Government, a number of individuals—I think it is somewhere on the order of 150 individuals who have been injured as a result of violence in Juarez—have been paroled into the U.S. to be treated at U.S. medical facilities in El Paso, and that has resulted in the uncompensated care provided by the hospitals in El Paso ranging in the \$3 million range. I believe Silvestre Reyes, the Congressman from that area, has written to the President about these costs. When we had Secretary Napolitano here, I asked her about that and introduced copies of those letters into the record.

I know there is also some additional uncompensated care that medical doctors have provided in addition to the hospital facilities themselves. If the policy of the U.S. Government is such that these individuals are going to be given humanitarian parole for purposes of medical treatment, wouldn't you think it should be the financial responsibility of the Federal Government to pay those bills rather than the local taxpayers of El Paso County or the city of El Paso?

Mr. MAYORKAS. Senator, I understand the concern. It is a concern that we actually confronted following the tragic January 12th earthquake in Haiti when we, in collaboration with Customs and Border Protection, our sister agency, were bringing in people for emergency medical care. And the question arose as to funding for that care, and it is a bit outside my area of expertise as to the optimal source of that funding, whether Federal or State. I know there are some programs in place to provide funding. I cannot speak of whether any such program exists to address the situation that you have identified.

Senator CORNYN. In conclusion, because I see my time is up, let me just say that I think in our conversations between you and me, I have told you that I am a supporter of sensible, comprehensive immigration reform to deal with all aspects of our broken immigration system, to hopefully help make your job easier, to emphasize legal immigration and encourage it and to discourage illegal immigration. But I think it would be a mistake for the administration to use administrative action like deferred action on a categorical basis to deal with a large number of people who are here without proper legal documents, to regularize their status without Congress' participation. I will just say that to you for what it is worth.

Thank you very much for being here.

Mr. MAYORKAS. Thank you, Senator.

Chairman LEAHY. Thank you, Senator Cornyn.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much.

Mr. Mayorkas, Ali, good to see you again. I gather you have moved vigorously within 11 months and reviewed the Department and making some changes, and I think that is all to the good.

I also had the pleasure of suggesting him for United States Attorney in Los Angeles many years ago, and I can only say—

Chairman LEAHY. Good suggestion.

Senator FEINSTEIN.—he had much more hair then.

Chairman LEAHY. When I came to the Senate, I did, too.

[Laughter.]

Senator FEINSTEIN. Director Mayorkas, it is my understanding that current law states that within 5 years of naturalization, any affiliation that would have precluded citizenship, like membership in a terrorist organization, is prima facie evidence that the person can have their citizenship revoked after the fact. In the absence of countervailing evidence, the statute, Section 1424, says that a terrorist affiliation is enough to authorize revocation.

We are having a robust debate in the Congress because a member has introduced legislation which some of us believe, in view of this section, is really not necessary. And here is the question. I am not going to ask you to go into the Shahzad case, but I am going to ask this question. You have an attempted car bombing, a connection to the Pakistani Taliban, a guilty plea, all of which could certainly be construed that Mr. Shahzad was not attached to the principles of the Constitution and, therefore, should have his citizenship revoked. It is my understanding that within 5 years from naturalization, this section would allow such a revocation. Is that not true for Mr. Shahzad?

Mr. MAYORKAS. Senator, thank you very much. Let me first, if I may, say that the fact that it was you who recommended me back in 1998 to be the United States Attorney is an everlasting source of pride for me and something that I remember each day.

Senator FEINSTEIN. For me, too.

Mr. MAYORKAS. Thank you, Senator. I am myself studying—not with respect to the Shahzad case specifically—but if I may generalize it, the naturalization process, the application itself and the relevant law, as I understand the law. Please, if I may, my study is only preliminary. As I understand it, citizenship may be revoked if the individual obtained that citizenship through fraud or misrepresentation or was ineligible at the time of naturalization. And it is an evidentiary question whether information obtained subsequent to the naturalization or events unfolding subsequent to the time of naturalization speak to an ineligibility at the time of the application itself.

Senator FEINSTEIN. I would just call your attention to subsection (c), USC Section 1451, subsection (c): If a person who shall have been naturalized after December 24, 1952 shall within 5 years next following such naturalization become a member of or affiliated with any organization, membership in or affiliation with which at the time of naturalization would have precluded such person from naturalization under the provisions of Section 1424 of this title, it shall be considered prima facie evidence that such person was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States at the time of naturalization and, in absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize to revocation . . . and the cancellation of the certificate of naturalization. It seems to me that Mr. Shahzad eminently figures right within that definition.

Mr. MAYORKAS. As I hear that statute, as you read it, Senator, that is an evidentiary provision that speaks to a prima facie case that may indeed, if I understand it correctly, shift the burden to rebut. Whether or not the Shahzad case triggers Section 1424 or not is a question I cannot answer.

Senator FEINSTEIN. Well, look, I am not asking you to get into the Shahzad case, but it seems to me any naturalized citizen who within 5 years of naturalization commits a terrorist crime, associates with terrorists, engages in bomb making, clearly with the intent to do great harm to the people of this country, and pleads guilty to it, is covered by this section. If you do not want to say anything, you do not have to, but, I mean, it is clear on its face, at least to me.

Mr. MAYORKAS. It would seem so to me as well, Senator.

Senator FEINSTEIN. OK. Thank you.

I am particularly concerned about fraudulent immigration specialists, so-called, who misrepresent themselves as attorneys to defraud individuals who seek immigration assistance. Last year, I introduced a bill, the Immigration Fraud Prevention Act, which would penalize and prevent this kind of immigration fraud. Given the enormous amount of applications that come across your section each day, how does USCIS detect when a phony immigration specialist files an application?

Mr. MAYORKAS. Senator, thank you very much for your question and also for your work with respect to that Act. As an agency, we are actually going to be launching an initiative to address the unauthorized practice of law and notario fraud and other efforts to prey upon the vulnerable immigration population. That is going to consist of a robust communication with the immigrant advocacy community and the immigrants that they serve to raise awareness of the unauthorized practice of law and notario fraud, to discuss with the advocacy community and other stakeholders an accreditation service and what we as an agency can do as a conduit between the immigrants we serve and the Government to stamp out this. This is a real problem—we recognize it, and we are developing an initiative to address it.

Senator FEINSTEIN. Thank you. Please be vigorous in that regard. I have a serious problem with people that take advantage of very vulnerable people. To me, there is no excuse for this. So I would welcome your most vigorous approach.

Mr. MAYORKAS. And we will employ it, and I will say, Senator, that when I was United States Attorney, we had a very significant investigation and prosecution of notario fraud that was the largest of its kind in the Nation.

Senator FEINSTEIN. I wanted to ask just quickly one—my time has expired. Do you mind if I ask one more question?

Senator FRANKEN. [Presiding.] Not at all. It is just the two of us, and I am the Chair, and as far as I am concerned, you can ask whatever you want.

[Laughter.]

Senator FEINSTEIN. Excellent. All right. That is just fine.

I wanted to talk to you about a paragraph in your written statement which is on page 7, and you mention that you are working hard to improve E-Verify's ability to detect identity fraud. And you in this paragraph more or less make the judgment that a photograph offers a biometric comparison. I really do not agree with that. I think only real biometrics offer full fraud prevention. I am sure you have been to Alvarado Street in Los Angeles, as have I. You know the quality of documents, fraudulently, that can be pro-

duced inside 20 minutes or 30 minutes and how easy it is. And it seems to me the picture is very easy to falsify.

I happen to believe that people have a responsibility to be who they really are, not to pretend they are somebody else, particularly when they are in this very permissive and yet fragile state of a work visa in this country. I think the Government and the people who hire them are really entitled to know that, in fact, they are who they say they are. Therefore, it seems to me that a place to really start with true biometrics is in the green card. It also seems to me that if we are going to do a comprehensive immigration bill—and I very much hope we are—one of the criteria is going to have to be positive identification.

Mr. MAYORKAS. Senator, I think that my written testimony to which you refer speaks of the use of photographs as an improvement. While photographs are not as assuredly accurate as fingerprints, they are an improvement over the lack of photographs. And I should say with respect to the legal permanent resident card, commonly known as the green card, we are unveiling this week for the first time in quite a number of years a more secure green card that has state-of-the-art security features so that it is more difficult to counterfeit and we can more easily detect identity fraud. So we are making strides.

Senator FEINSTEIN. Are you prepared to say to me it cannot be counterfeited on Alvarado Street? I would not do that if I were you.

Mr. MAYORKAS. With that admonition, I will—

[Laughter.]

Mr. MAYORKAS. I will say that—

Senator FRANKEN. That sounded like a threat.

Mr. MAYORKAS. Based on my experience, with that street being within the jurisdiction of the Central District of California, as I dealt with the counterfeiting of permanent resident cards as an Assistant United States Attorney and as the United States Attorney, I think this card would be very difficult to counterfeit.

Senator FEINSTEIN. Oh, you do?

Mr. MAYORKAS. Yes.

Senator FEINSTEIN. All right.

Mr. MAYORKAS. I did not say impossible, but I do think it is much more difficult, and I query whether the one-stop shops on a street corner that used to counterfeit the green cards have the level of sophistication to counterfeit this card.

Senator FEINSTEIN. May we see one of those cards when you have them ready for distribution?

Mr. MAYORKAS. Most certainly.

Senator FEINSTEIN. Thank you very much.

Thanks, Senator. I appreciate it. Thank you.

Mr. MAYORKAS. Thank you, Senator.

Senator FRANKEN. Thank you, Mr. Director.

A couple weeks ago, Senators Reid, Durbin, Feinstein, Menendez, and Schumer released a conceptual proposal for comprehensive immigration reform as an invitation to our colleagues on the other side of the aisle to come negotiate and act bipartisan legislation. One criticism, however, that is repeatedly made about enacting immigration reform legislation is that USCIS does not have the resources at this time to effectively process immigration reform legis-

lation because it typically receives 4 to 6 million applications for benefits each year and will be receiving millions more applications when the legislation is enacted.

My question is: Is your agency prepared to handle comprehensive immigration reform? Can you share with the American people your plan for how you would process these applications in an efficient and effective manner and the work that has gone into developing your plan? It is a big question, I know, but we might as well end with it.

Mr. MAYORKAS. Thank you very much, Senator. I welcome the question.

Let me say that our agency will be prepared to implement comprehensive immigration reform when the legislation passes. We will require funding to implement a plan, should the plan include a path to legalization for the approximately more than 10 million people in this country, according to studies. What we have done, Senator, each and every day is to review our processes and develop greater efficiencies. These efficiencies will serve us in the implementation of any reform legislation that is passed. And I think the best example of that is with respect to the unanticipated volume of applicants for Temporary Protected Status following the January 12th earthquake in Haiti.

Because of the operational improvements that we made and the nimbleness that we developed in trying to always improve our system, we were able to take on that unanticipated volume of applications. We have addressed the applications with tremendous dispatch. Our security mechanisms are as robust as they ever were with respect to that population as they are with all of the populations that come before us.

So I say with confidence that we as an agency will be ready to implement comprehensive immigration reform legislation. We will need the opportunity of funding and time to implement it.

Senator FRANKEN. Well, thank you very much for all your testimony today, Director Mayorkas.

The record will be kept open for a week. This hearing is adjourned.

Mr. MAYORKAS. Thank you, Senator.

[Whereupon, at 11:09 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Question#:	1
Topic:	NSC
Hearing:	Oversight of USCIS
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: The recent NYC bombing attempt by a naturalized citizen highlights the need to scrutinize current immigration laws and strengthen them to weed out potential terrorists. USCIS is the agency charged with deciding whether an alien can get an immigration status – whether nonimmigrant or green card status, or the ultimate privilege of U.S. citizenship.

What do you see as the biggest obstacles to USCIS effectively handling national security cases?

Response: At USCIS we understand the critical importance of our role in protecting national security. Based on an organizational review, the Office of Fraud Detection and National Security (FDNS), has been elevated to the status of a Directorate reporting directly to the USCIS Director. FDNS is also an original member of the DHS Intelligence Enterprise and represents USCIS on the Homeland Security Intelligence Council, which is composed of representatives from the intelligence components of the Department, and serves as an implementation oversight body that supports the DHS Chief Intelligence Officer.

In response to the question regarding obstacles to effectively handling national security cases, USCIS is required to decide cases based on the evidence in the record. USCIS usually bases its decisions on material that is disclosed to the applicant or petitioner rather than on classified information, even where that classified information directly affects eligibility. In some instances, USCIS will request declassification of information so that it can be used in a decision. In other instances, USCIS may seek permission to use classified information in a decision. When USCIS seeks to declassify or use classified information, it is when there is no other ground for denial in cases where there is a significant national security or public safety threat.

When national security concerns arise in the adjudication of a benefit, USCIS has and continues to work closely with its partners in the law enforcement and intelligence community to ensure that USCIS actions are consistent with the best interests of the government in protecting national security and public safety.

USCIS benefits from post-9/11 information sharing initiatives, and agencies across the government continue to refine and improve on information sharing. Nevertheless, there is room for improvement in our informational sharing protocols. USCIS actively works to coordinate and improve information sharing policies and processes across the

Question#:	1
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Primary:	The Honorable John Cornyn
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Department and with our law enforcement and intelligence partners at the Federal, State, and local levels.

Another concern is that, in some cases, Federal courts can compel USCIS to render immigration decisions when an unresolved national security concern exists.

Question: What reforms should be made to the adjudication process to better handle national security cases?

Response: We are constantly reviewing our processes to identify best practices and other improvements that can be made in handling national security cases. A current focus is improving information sharing and use protocols with our law enforcement, and intelligence community partners to better enable USCIS to develop national security cases and make sound adjudicative decisions without compromising classified information.

In April 2008, USCIS implemented the Controlled Application Review and Resolution Program (CARRP) in order to ensure the systematic review and adjudication of applications or petitions with national security concerns. The policy established uniform guidance and decentralized the national security caseload among all USCIS adjudicative offices. The standard four-step process includes: 1) identifying one or more national security concerns, 2) assessing eligibility and conducting internal vetting, 3) conducting external vetting and deconfliction, and 4) rendering final adjudication. Through CARRP, USCIS maximizes its ability to obtain and consider national security information without compromising any ongoing investigations or enforcement activities.

USCIS relies on our law enforcement, and intelligence partners for information relating to applicants' criminal records, national security concerns, and public safety concerns. In return, USCIS provides information and assistance to law enforcement and intelligence agencies, in the form of immigration information and expertise, to enable those agencies to more efficiently perform their duties. We are constantly working to build and improve upon these relationships.

Question#:	2
Topic:	denaturalization
Hearing:	Oversight of USCIS
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: The recent NYC bombing attempt by a naturalized citizen also highlights the need to strengthen our immigration laws so that we can denaturalize aliens who commit and are convicted for terrorist acts in the U.S. My understanding is that USCIS does not currently conduct administrative denaturalization proceedings because of a decision in the 9th Circuit barring such actions.

Do you think USCIS should be allowed to conduct administrative denaturalization proceedings?

Response: The proper balance of authority between administrative and judicial authority with respect to denaturalization, and other matters relating to potential ineligibility for naturalization and other immigration benefits on the basis of terrorism and other national security concerns, are subjects that would be appropriate for Congress to fully consider.

Question: Do you think there are changes needed to the naturalization and denaturalization laws to strengthen USCIS' ability to identify and deny potential terrorists from obtaining an immigration status?

Response: Please see above.

Question: If yes, what changes would you recommend?

Response: Please see above.

Question#:	3
Topic:	mexican asylum
Hearing:	Oversight of USCIS
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: Recently the Miami Herald reported on the increase in Mexican asylum claims and approvals by DHS because of the border violence in Mexico.

Can you tell me how many claims you have seen since the beginning of this year?

Response: Before addressing the specific question asked, we would like to provide Congress with some additional factual background on the article to which the question refers. An April 2, 2010 Miami Herald article, "Asylum Approvals for Mexicans Up," referenced the number of asylum approvals by USCIS asylum officers and EOIR immigration judges and stated there was an increase in approvals from FY07 to FY08 and a slight decrease from FY08 to FY09. The information presented in the article does not coincide with our statistics. It appears that the article erroneously combined the number of affirmative asylum approvals with the number of defensive asylum approvals and the number of positive credible fear determinations that are referred to the Immigration Court for a full hearing. A positive credible fear determination does not confer an immigration benefit. It merely serves as a basis for referring an otherwise removable arriving alien for removal proceedings where he or she may apply for asylum defensively before an Immigration Judge. It is inaccurate to combine these three figures and also double counts those individuals found to have a credible fear who are later granted asylum by an Immigration Judge.

In addition, although the article stated that "[t]he majority of new asylum applicants are former police officers, lawyers and journalists," the statement is not based on information that USCIS provided. The Asylum Division does not track the basis of a claim with enough specificity to determine the exact number of Mexican nationals fleeing due to generalized violence or whether the Mexican nationals are civilians or government, law enforcement or military officials. Claims based on generalized violence often do not qualify for asylum eligibility because the harm faced by the applicant is not on account of a protected ground.

Mexican nationals present in the U.S. who are not in removal proceedings may affirmatively apply for asylum with the USCIS Asylum Division. In the affirmative asylum context, from October 1, 2009 to March 31, 2010, USCIS received 870 newly-filed asylum applications from Mexican nationals, and in that same period granted 27 cases. In FY09, there were 1,393 newly-filed asylum applications from Mexican nationals, and in FY09, 150 cases were granted. After a slight decrease in new cases for

Question#:	3
Topic:	mexican asylum
Hearing:	Oversight of USCIS
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

FY09, the number of new cases through second quarter of FY2010 has increased; however, those numbers remain on track to remain below FY07/08 levels.

In addition, Mexican nationals placed into expedited removal who claim a fear of return or express an intention to apply for asylum are referred by ICE or CBP to the USCIS Asylum Division for a credible fear protection screening. The majority of individuals in the credible fear process are subject to mandatory detention while their cases are pending credible fear interview. As such, USCIS works closely with ICE and CBP in processing these individuals.

From October 1, 2009 to March 31, 2010, there were 233 credible fear referrals from CBP or ICE of Mexican nationals in expedited removal. In that same period, there were 84 positive credible fear determinations. In FY09, there were 338 credible fear referrals, and 118 positive determinations. In both FY08 and FY09, credible fear referrals of Mexican nationals accounted for 6% of the total number of credible fear cases referred to USCIS. Through the second quarter of FY10, referrals of Mexican nationals accounted for 6.7% of the total number of referrals. Although the volume of cases of Mexican nationals received through the second quarter has increased as compared to the same period last year, the number of cases as compared to the overall volume of credible fear receipts has remained steady.

Those individuals who receive a positive credible fear determination are placed into a full removal hearing before an immigration judge where the individual has an opportunity to apply for asylum or other available relief. USCIS does not collect statistics on the outcome of proceedings once those individuals are placed into removal proceedings. For those statistics, we would respectfully refer you to the Department of Justice.

Question: What is the basis of such claims? Political opinion? Membership in a particular social group? Religion? Nationality?

Response: Please see prior response.

Question: My understanding is that generalized violence isn't usually sufficient to establish an asylum claim. Isn't that correct?

Response: Please see prior response.

Question: Are asylum claims coming mainly from Mexican government or military officials or also from civilians?

Response: Please see prior response.

Question#:	4
Topic:	treatment
Hearing:	Oversight of USCIS
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: Recently, the University Medical Center in El Paso wrote to President Obama about the impact of the on-going violence in Mexico on hospital resources. It has spent almost \$3 million to care for victims of border violence. Also, the hospital has had to care for some patients for significant periods of time, using many resources also needed for critical care of local residents.

During last week's Drug Caucus hearing, I asked about Mexican asylum claims and how injured Mexicans were entering the United States for treatment. I understand some Mexicans enter on border crossing cards (BCC).

For those who do not have border crossing cards, do you know if they are generally paroled in?

If yes, once paroled in, who is responsible for ensuring they return to Mexico after completing hospital treatment?

Response: Provided that an applicant for admission seeking medical treatment is otherwise admissible, the alien may be admitted as a temporary visitor in "B" nonimmigrant status. In such cases, the applicant for admission would be expected to show, among other things, that he or she has sufficient funds to cover his/her expenses while in the United States or that arrangements were made for payment of any medical services to be provided. For Mexican citizens, this may mean that they are admitted with a border crossing card. A Mexican citizen may have a visa for other reasons and may be properly admitted on that visa. Even with a valid nonimmigrant visa or border crossing card, the applicant must show that he or she is admissible. However, CBP may also exercise discretionary authority to parole any alien who does not have a visa or border crossing card and is an applicant for admission (whether or not admissible) for urgent humanitarian reasons or significant public benefit.

In El Paso, severe trauma cases are generally referred to the University Medical Center (UMC). CBP does not render any medical evaluations or determinations regarding any applicant seeking admission for medical care. CBP relies on the opinion of responding emergency medical services professionals and defers to the decision of the responding ambulance company regarding the appropriate medical facility for medical treatment. Sierra Hospital treats many of the maternity cases and minor medical issues, while gunshot and stabbing victims are usually taken to UMC. Many of these cases involve U.S. citizens or lawful permanent residents (LPRs) who are entering the United States

Question#:	4
Topic:	treatment
Hearing:	Oversight of USCIS
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

from Mexico seeking medical care. If a U.S. citizen intends to seek medical care, his or her ability to pay for it does not affect his or her right to enter the United States. In the case of an LPR, ability to pay for medical care would be a question affecting possible inadmissibility to the United States only in rare circumstances.

CBP provides escorts or guards only in cases where an applicant for admission remains in CBP custody and has been determined to be inadmissible and is in CBP custody. In these cases, CBP makes arrangements to have such aliens escorted under guard supervision to the medical facility for treatment.

Immigration and Customs Enforcement (ICE) is ultimately responsible for the removal of any alien who was admitted or paroled into the United States and who has overstayed or violated the terms of his/her admission or parole. Once an alien is medically cleared by a physician, CBP may then terminate a parole and turn the individual over to ICE custody for removal from the United States.

Once these individuals are in ICE custody, ICE will place them in removal proceedings. If the individual had been admitted, they will likely be placed into proceedings pursuant to 240 (a)(2) of the Immigration and Nationality Act. If they have not been admitted and they are placed into expedited removal and request asylum or express a fear of return, ICE refers the individuals to U.S. Citizenship and Immigration Services (USCIS) for a credible fear interview and either continues their detention throughout the credible fear and removal process, or releases the individuals on parole from custody. Parole from custody under 212(d)(5) of the Immigration and Nationality Act for aliens who are in expedited removal and are found to have a credible fear is considered on a case-by-case basis for humanitarian reasons and is considered only when the alien does not present a security risk nor a risk of absconding. In those cases where the individual is found to have a credible fear of persecution or torture, the USCIS Asylum Office will issue a Notice to Appear, thus initiating removal proceedings. If the individual does not have a credible fear, the individual will be ordered removed through the expedited removal administrative process. ICE is responsible for enforcing removal orders issued by DHS (under expedited removal) or an immigration judge.

Question#:	5
Topic:	backlogs
Hearing:	Oversight of USCIS
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: I understand that USCIS has been working hard to reduce backlogs in all categories of immigration benefits, but you are not there yet. Can you tell me:

What the current state of USCIS backlogs is especially for cases pending with the Administrative Appeals Office (AAO)?

What plan is in place to reduce these backlogs?

Response: The Administrative Appeals Office (AAO) attempts to resolve cases within six months of receiving a completed case file. It succeeds in this effort in the majority of the cases that fall within its jurisdiction. However, due to the complexity and volume of certain types of cases, about 35 percent of AAO cases do take longer to resolve.

The AAO is now addressing the backlog in a variety of ways and will utilize all innovative measures necessary to ensure the backlog does not continue to grow. Towards that end, the AAO is actively working with the Department of Homeland Security Office of the General Counsel and the Department of Justice to move forward with the publication of AAO precedent decisions. The guidance given through the issuance of precedent decisions will promote consistency in adjudications and clarity in the law, and improve public awareness of the law, ultimately reducing the number of appeals filed.

However, on average processing times for all application and petition workloads currently equal or exceed the standards set in our 2007 fee rule after USCIS finished working through the surge in applications that preceded the new rule's effective date. Processing times are expected to remain equal or above current standards during this year and in FY 2011.

Question#:	6
Topic:	TI
Hearing:	Oversight of USCIS
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: USCIS has been working on transformation for at least 4 years now and the agency is still not ready to accept filings of all applications and petitions electronically. This is a concern, especially if Congress were to pass a comprehensive reform bill which could increase filings by several million people.

What is the status of USCIS' transformation initiative?

Response: I recognize the fundamental necessity and importance of the USCIS transformation effort to the future success of our agency, and am personally involved every day in this initiative. Our progress has not been as swift as desired, but I believe that we have laid the groundwork for success.

The groundwork has brought USCIS to an important milestone – the near finalization of the blueprint for the first transformed capabilities for part of the nonimmigrant line of business. The blueprint will be completed later this summer, and details new business processes and information technology systems. USCIS can then begin to design, build, and test the electronic case management system for the nonimmigrant benefits.

Nonimmigrant benefits include applications for temporary work in the U.S. One of the benefits of transforming these cases first is that it will better prepare USCIS in the event that comprehensive immigration reform passes in Congress.

The first transformation customer-facing changes are expected to be deployed in Fall 2011 and will provide the following capabilities for many nonimmigrant benefits:

- ☐ Customers will be able to create electronic accounts with USCIS and they will be able to manage these accounts online.
- ☐ Critical information and evidence such as identity documentation will be easily accessible because it is managed and protected electronically.
- ☐ Information will be shared, in compliance with applicable privacy laws and standards, across Federal departments to contribute to national security and improve the accuracy of information regarding our customers.
- ☐ Employees will have support for their decisions by having information readily accessible in a central repository and tools to manage their workload.

By Fall 2012, organizations, such as employers or law firms, will be able to establish electronic accounts with USCIS, and online case management will be expanded to

Question#:	6
Topic:	TI
Hearing:	Oversight of USCIS
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

encompass all nonimmigrant benefits. Between 2011 and 2014, USCIS will expand the transformed capabilities to the remaining USCIS portfolios – immigrant, humanitarian and citizenship.

Question: When do you project USCIS will be able to accept electronic filings of all requests for immigration benefits and adjudicate cases online?

Response: The first phase of transformation will involve nonimmigrant benefits and is expected to be implemented in 2011. At that time, USCIS will begin accepting electronic filings for the affected benefit types and adjudicating them using an electronic case management system, including paper filings that USCIS will digitize. By the end of 2014, we anticipate that we will be able to accept electronic filings for all immigration benefits and to process all adjudications through the new case management system. (Please see attached slide set for detailed information regarding benefit impacts and the current status of the Transformation program.)

Question#:	7
Topic:	fraud
Hearing:	Oversight of USCIS
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Director Mayorkas, during your hearing you testified that the United States Citizenship and Immigration Services (USCIS) is undertaking a public outreach effort to educate the public about fraudulent “immigration specialists” who misrepresent themselves as attorneys to defraud individuals who seek immigration assistance. As you may know, last year I introduced the “Immigration Fraud Prevention Act,” which would penalize and prevent immigration fraud.

Given the enormous amount of applications that come into USCIS each day, how does USCIS internally detect when a phony “immigration specialist” files an application?

Response: This is a very important issue. The unauthorized practice of immigration law (UPIL) is a significant concern to USCIS and to our stakeholders. The problem is especially relevant as we transform to an electronic environment, implement e-filing, and respond to any expansion of our customer base resulting from initiatives and mandates.

USCIS can track attorneys and accredited representatives who complete and file a Form G-28 Notice of Entry of Appearance as Attorney or Accredited Representative. Additionally, information on preparers of forms who are not attorneys or accredited representatives can be captured from the preparer data provided on the applications and petitions. However, this information is often omitted by the preparer.

Information suggesting unqualified representation can come to USCIS in various ways, including customer complaints and the diligence of an adjudicator reviewing a case. When an adjudicator finds “reasonable suspicion” of misrepresentation within an immigration petition/application or suspects misconduct on the part of a preparer, the application/petition is forwarded to the Fraud Detection and National Security Immigration Officer (FDNS IO). The FDNS IO then checks the “immigration specialists” for any history of known or suspected fraud. If there is a known or suspected history of fraud, the matter is referred to Immigration and Customs Enforcement, per a Memorandum of Agreement, for further investigation. If there is no known or suspected history of fraud, the FDNS IO develops the case through further research. We work with our partners in law enforcement to promote and facilitate the prosecution of preparers who have committed crimes.

It should also be noted that USCIS is engaged in community relations outreach programs, with one of its priorities being to educate immigrant communities about issues associated with the fraudulent preparers of immigration petitions/applications.

Question#:	7
Topic:	fraud
Hearing:	Oversight of USCIS
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: When USCIS finds that an “immigration specialist” filed an application, what is the process for investigating other cases where the specialist may have filed applications?

Response: Within the Fraud Detection and National Security Data System (FDNS-DS), all persons and applications associated with a fraudulent “immigration specialist” may be connected by querying a data system. Once linked, the entries are reviewed by Fraud Detection and National Security officers to determine if further action on the case is necessary.

Question#:	8
Topic:	adjudications
Hearing:	Oversight of USCIS
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: The U.S. Citizenship and Immigration Services Ombudsman recently released a report that discussed some of the problems with the refugee application process. The report stated that applicants have a hard time trying to appeal a denial of their refugee application because they don't have specific information about why their application was denied. According to the Ombudsman's report, the refugee application denial letter (Notice of Ineligibility for Resettlement) only checks a box in a list of generic categories for denial. The USCIS Ombudsman recommended that USCIS provide "clear and case-specific" reasons for the denial.

Does USCIS plan to follow the Ombudsman's recommendation and revise the form to provide case specific information when a refugee application is denied?

Response: USCIS is carefully considering the recommendations outlined in the USCIS Ombudsman's report on refugee processing issued on April 14, 2010. In accordance with section 452 of the Homeland Security Act, USCIS will issue its formal response within 3 months of issuance of the report. While a final decision on whether to accept all or some of the Ombudsman's recommendations is still under review, we would like to provide a brief update on the issuance of a new Notice of Ineligibility for FY2010.

In October 2009, USCIS issued a revised Notice of Ineligibility that provides more detailed information to applicants found ineligible for refugee resettlement. One of the features of the new Notice is a section that outlines more specific reasons an applicant may have been found not credible, including which eligibility requirements, as provided under section 207 of the Immigration and Nationality Act, were implicated by the finding. The Notice also includes a section to record how the credibility issues were identified (e.g., internal inconsistencies in the applicant's testimony). We are currently in the process of requesting feedback from our stakeholders on this new Notice and collecting data on its efficacy.

Question#:	9
Topic:	adoption
Hearing:	Oversight of USCIS
Primary:	The Honorable Amy Klobuchar
Committee:	JUDICIARY (SENATE)

Question: Minnesota has one of the highest per capita rates of international adoption, and in the wake of the horrible tragedy with the earthquake in Haiti, many Minnesota families with adoptions already in process were left in limbo. I'm grateful to you for the work that you and Secretary Napolitano have done so far to resolve many of those cases, in Minnesota and elsewhere.

In your written testimony, you stated that since the earthquake in Haiti, USCIS has provided travel authorization for 1,089 Haitian orphans. You also state that approximately 350 cases remain pending.

What is USCIS doing to expedite the 350 pending cases?

Is USCIS planning to do anything additional to promote the adoption of children from this devastated country?

Response: USCIS continues to dedicate significant resources at headquarters and at Field Office Port au Prince to completing the remaining Special Humanitarian Parole cases for Haitian orphans. As of this writing, there are fewer than 70 pending cases. The majority of these cases required requests for additional information. We hope to have completed all outstanding cases by the end of July.

Regular adoption processing in Haiti has resumed and the USCIS Field Office in Port au Prince stands ready to adjudicate adoption cases as expeditiously as possible.

Question#:	10
Topic:	initiative
Hearing:	Oversight of USCIS
Primary:	The Honorable Amy Klobuchar
Committee:	JUDICIARY (SENATE)

Question: In your written testimony, you mentioned that one of your first initiatives after becoming Director of CIS was the creation of a new Fraud Detection and National Security Directorate which is focused on detecting, combating, and deterring threats to our public safety and fraud in our system.

Can you tell us more about this initiative?

Response: FDNS began as a new office in USCIS in 2004, but it was housed within a USCIS directorate with multiple missions. In January of this year, as a result of a top-to-bottom organizational review and realignment, I promoted FDNS to the Directorate level. This promotion puts the dedicated head of our anti-fraud and national security programs at the leadership table and heightens our focus on this critical function. I believe that this move, in itself, demonstrates an increasing commitment to ensuring the integrity of immigration benefits processes.

Question: What other preventative efforts have you been engaging in to deter fraud in the immigration system?

Response: Our anti-fraud efforts include ongoing review and revisions of our policies and processes, enhanced training, the implementation and refinement of our Administrative Site Visit and Verification Program (ASVVP) described further below, and the enhancement of our working relationship with our law enforcement partners—particularly ICE—within DHS and throughout the government.

On July 22, 2009, USCIS implemented ASVVP, a new site visit-based initiative aimed at verifying the “bona fides” of an immigration petition. ASVVP currently focuses on Religious Worker (immigrant and non-immigrant) and H-1B petitions. Site inspections are valuable tools for the detection and deterrence of fraudulent filings.

USCIS has engaged in advanced training of Fraud Detection and National Security Immigration Officers (FDNS IOs) on fraud-related matters through the implementation of journeyman training classes. These classes encourage the sharing of best practices and provide FDNS and operations managers the opportunity to inform FDNS officers of the latest developments in fraud and national security matters.

Question#:	11
Topic:	regional centers
Hearing:	Oversight of USCIS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: Given the recent growth in the EB-5 Regional Center program, I am aware that the agency may need more resources in order administer the program efficiently and effectively. You stated in your testimony that the agency is considering a fee for Regional Center applications. I believe it makes sense for USCIS to have the ability to generate revenue through applications seeking Regional Center status.

Do you believe that additional revenues could improve the agency's ability to handle an increasing number of petitions for Regional Center status?

Could additional revenue also assist the agency in its review of business plans for projects associated with Regional Centers?

Response: In a proposed rule published in the Federal Register on June 9, 2010, USCIS included a new fee that, if made final, would recover the cost of adjudicating applications for Regional Center designation.

Question#:	12
Topic:	artist visas
Hearing:	Oversight of USCIS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: I recognize that the agency is undertaking a broad policy review of adjudication procedures, and I welcome that. But I share the concerns that Senator Hatch raised in the hearing related to O and P visa adjudication. Stakeholders, particularly in the non-profit arts community, depend on your agency to help them bring foreign performers to the United States. I have been contacted by arts organizations that are frustrated by inconsistent requests for evidence associated with artist petitions that can lead to lengthy processing times.

I have joined Senator Kerry and Senator Hatch in support of the Arts Require Timely Service Act (S.1409) to ensure that the United States can continue to benefit from foreign musicians and other artists. However, it would be preferable if the agency could meet the goal of this legislation on its own.

What immediate steps are you taking to address these stakeholder concerns and ensure an efficient and dependable process for American arts organizations that depend on your agency?

Will the policy review your agency is currently undertaking address issues raised by stakeholders related to service center adjudications and requests for evidence?

Response: I am familiar with concerns about our processes for adjudicating O and P petitions, which are fueled by the importance of timely processing of these cases for American arts organizations and the public they serve. We have commenced an O and P initiative that includes a thorough review of policies with a view to issuing new and effective guidance, and thorough and continuous outreach to our stakeholders.

USCIS is actively addressing stakeholder concerns through the development of the Request for Evidence (RFE) project and by convening a cross center working group at USCIS Headquarters with representatives from the California and Vermont service centers who adjudicate O and P petitions. USCIS is also reviewing the Adjudication Field Manual, existing policy guidance, and training materials at each center to identify where additional guidance and training is needed. In addition, a public mailbox has been created to provide the public an avenue for input and comments.

The goal of the RFE project is to develop consistent adjudications between the centers and to revise the current RFE templates to facilitate consistent, relevant, concise and clear RFE templates. The O and P working group will review cases in an effort to identify

Question#:	12
Topic:	artist visas
Hearing:	Oversight of USCIS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

differences in the adjudicative standards between the centers and to recommend clearer guidance for the O and P classifications.

USCIS has also developed an internal performing arts working group with components from relevant USCIS offices. This working group regularly meets to review current policy guidance and adjudicative standards between the centers. The group is also collaboratively working to create field guidance that will address some of the stakeholder concerns. The guidance will clarify the standard to be used by adjudicators in the O and P context.

Question#:	13
Topic:	TPS
Hearing:	Oversight of USCIS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: I strongly supported Secretary Napolitano's announcement that Haitians in the United States would be eligible for temporary protected status (TPS), a commendable humanitarian response to the tragic earthquake that devastated Haiti. The Miami Herald reported on April 9, 2010 that the number of Haitian applications for TPS have been far fewer than the number the agency estimated to be eligible, suggesting that the shortfall may have been attributed in part to the \$470 filing fee.

Furthermore, while 2,307 Haitian applicants requested fee waivers, only 1,174 have been approved. Temporary Protected Status enables Haitians to work and send money home to relatives in Haiti, so there is a benefit to both the recipient and to our government.

What are you doing to inform Haitians eligible for TPS about the availability of fee waivers? How are you ensuring that waivers are granted to those who are eligible?

Response: I am very proud of the work USCIS has done on many fronts to help address the tragedy of the devastating January 12, 2010 earthquake, including our outreach and educational efforts on Haitian TPS, including eligibility for fee waivers.

Outreach

As part of our ongoing, nationwide efforts to inform eligible Haitians about the procedures for applying for TPS, including how to request fee waivers, USCIS has engaged in numerous local and national stakeholder outreach meetings, conference calls and community engagements, both at USCIS offices and in settings sponsored by Haitian assistance organizations. We have made a special effort to target locations where we know many Haitians reside, such as Miami, New York, Boston and other places. USCIS has participated in more than 185 outreach engagements, including well-attended national conference calls, from January 12 through May 26, reaching well over 20,700 individuals at these events. USCIS representatives have spoken often about the availability of fee waivers for any applicant who demonstrates an inability to pay. In addition, USCIS has posted fact sheets and Questions and Answers about applying for TPS fee waivers on its website at www.uscis.gov under "Temporary Protected Status" and under the Haiti TPS page. These materials are in English as well as Creole. The USCIS National Customer Service number (1-800-375-5283) also provides information on a daily basis to individuals who call about TPS application and fee waiver procedures. The TPS application form, as well as the [Federal Register](#) notice announcing Haiti's designation for TPS – both of which are on the USCIS website - describe availability of fee waivers

Question#:	13
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and contain links to the website information on fee waivers. We have also established a dedicated public e-mail box for resolving concerns about fee waiver adjudications where applicants or their representatives think a problem may have occurred in the process. That email address is lockboxsupport@dhs.gov.

Waiver request and approval rates

The number of applicants who have requested a fee waiver remains at approximately 6% of the total number of applications received as of May 28, 2010, and the approval rate of recently-received fee waiver requests is at 90%. The approval rate is much higher than was the case initially. At the outset of the TPS program, the primary reason USCIS had to reject a number of the early fee waiver requests was that applicants failed to address specific regulatory requirements as set forth in 8 CFR § 244.20. That problem has largely been corrected through USCIS's enhanced outreach efforts, coupled with the efforts of the Haitian assistance organizations. The majority of supported fee waiver requests are now being granted.

Specially-trained USCIS officers at the application intake centers, called "Lockbox facilities," handle adjudications of the fee waiver requests. Most initial TPS waiver requests are adjudicated within five days of application receipt. USCIS has also developed clear guidance for its core group of fee waiver adjudicators. This is helping to ensure that TPS applicants of all nationalities receive prompt and consistent fee waiver decisions, and that eligible applicants with an inability to pay are granted such waivers.

Question#:	14
Topic:	widow penalty
Hearing:	Oversight of USCIS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: In the Fiscal Year 2010 Department of Homeland Security Appropriations bill, I worked with other Senators to include a remedy to the unfair statutory treatment of a widow or widower whose U.S. citizen spouse died during the two-year conditional period of their lawful permanent residence. Prior to our legislation, such a widow faced deportation, even where a marriage was legitimately entered into. I was pleased to be a part of the effort to correct this.

What can you tell the committee about your progress in implementing the newly enacted law?

How does the agency now handle these situations?

Response: Section 568(c) of the Fiscal Year 2010 Department of Homeland Security Appropriations Act became effective as of October 28, 2009, when President Obama signed the bill. Under the new statutory authority, USCIS took immediate steps to resolve the individual cases known to USCIS at that time. Subsequently, USCIS issued guidance on December 2, 2009 to inform all components of the agency and the public about the amendments to the statute and the way in which USCIS interpreted these new authorities (<http://www.uscis.gov/USCIS/Laws/Memoranda/2009/Widower120209.pdf>). This policy guidance lays out specifically how such cases are to be handled by our officers. USCIS also entered into a settlement agreement in January 2010 in a certified class action, *Hootkins v Napolitano*, CV-07-5696, related to this issue. The settlement was approved by the court on April 5, 2010 and information relating to the settlement is posted for the public in accordance with the agreement (<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=50634175bc927210VgnVCM100000082ca60aRCRD&vgnnextchannel=2492db65022ee010VgnVCM1000000ecd190aRCRD>). USCIS is fully committed to insuring that the beneficiaries of the change in law are afforded a fair opportunity to benefit from its provisions.

Sections 568(d) and (e) of the FY2010 DHS Appropriations Act provide separate authority to grant benefits to aliens other than the widow(er)s of citizens, despite the death of the qualifying relative. USCIS posted its draft policy guidance on this separate provision on the USCIS website at <http://www.uscis.gov/USCIS/Outreach/Draft%20Memorandum%20for%20Comment/Widow-Policy-2041-PM-Comment-5-11-2010.pdf>. Interested parties had until June 1, 2010 to provide comments on this draft guidance via openfeedback@uscis.dhs.gov.

Question#:	15
Topic:	Shahzad
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: According to reports, Mr. Shazhad was on a terrorist travel security list from 1999 to 2008. If that was the case, why was he provided with resident alien status and then United States citizenship? Did anyone check various terrorist databases in adjudicating his applications for residency or citizenship?

With all of the travel in which he was reportedly engaged, did he meet the physical presence requirements when he was naturalized?

Why was Mr. Shahzad granted an H1B visa? How much of an effort was made by his employer, Elizabeth Arden, to hire a U.S. Citizen or lawful immigrant?

Is anyone now checking into his immigration record to determine whether or not any "shortcuts were taken?"

How did his wife acquire United States citizenship? Is she was a naturalized citizen, has any thought been given to the possibility that she might have committed fraud in order to gain her residency or citizenship?

Response: The Department of Homeland Security is unable to comment on the specifics of these cases since the investigation remains ongoing.

Question#:	16
Topic:	E-Verify
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: In April, USCIS signed a Memorandum of Agreement with the DOJ's Civil Rights Division that commits the E-Verify program to refer suspicious use of the E-Verify program to the Civil Rights Division Office of Special Counsel for investigation and enforcement of the INA's antidiscrimination provisions. I believe that because E-Verify creates an electronic "trail," it helps cut down on discrimination and abuse by unscrupulous employers. But I want to make sure the program is not abused, and so I hope you will continue to make progress in building up your compliance and enforcement capabilities with E-Verify.

I am concerned, however, by what looks to me like a pretty significant overreach by the Civil Rights Division into compliance and enforcement operations for E-Verify. As you know, the Civil Rights Division's responsibility in this area is defined by statute it covers actions by employers taken with the intention of discriminating against a job applicant or an employee on the basis of citizenship status or national origin. The law does NOT give DOJ general authority to police any and all violations of the E-Verify program's terms of use. The agreement that your department signed with the Civil Rights Division looks, however, like DOJ will be getting referrals in any case where USCIS thinks someone is violating the rules for using E-Verify, whether or not there's any reason to believe the misuse is intended to discriminate on the basis of national origin or citizenship.

Was it your intention to hand over enforcement of the E-Verify program's rules to the Civil Rights Division? If not, why would USCIS have signed this agreement?

Response: USCIS has not ceded authority to the Department of Justice for enforcement of E-Verify program rules. We recognize that we do not have jurisdiction or expertise in civil rights enforcement and we therefore work with our colleagues in offices that do. Through our Memorandum of Agreement with the Department of Justice, USCIS has set up guidelines to refer specific cases for law enforcement action where appropriate and where USCIS does not have the statutory authority to take additional action.

The USCIS Verification Division instituted a Monitoring and Compliance branch to maintain the integrity of the E-Verify program and to help ensure compliance with established program rules. The branch uses algorithms to detect patterns of potential program misuse in E-Verify transactional data. When instances of potential misuse are detected, the branch takes appropriate action, often including contacting the employer with compliance assistance and attempting to remediate the issue. The branch then

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continues to monitor the employer's use to ensure the employer is no longer violating E-Verify program rules.

USCIS has enhanced monitoring and compliance activities to monitor E-Verify system use for incidents of identity fraud, discrimination, and other misuses. In April, we expanded the number of employer behaviors monitored for potential misuse. This fiscal year to date, we have issued over 9,000 compliance assistance actions (phone calls and letters) to employers, and in FY 2009, USCIS issued over 1,000 compliance assistance actions to employers. We are also working to expand our monitoring efforts and plan to deploy the first phase of an automated monitoring system later this fiscal year.

USCIS has established Memoranda of Agreement that sets forth guidelines for data sharing and case referral with both Immigration and Customs Enforcement (ICE) and the Department of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) to refer potential cases of illegal immigration-related activities (e.g., identity fraud) and discrimination (e.g., selectively verifying current workforce). When appropriate, cases of potential misuse detected by the Monitoring and Compliance branch are referred to enforcement authorities for additional follow up. In addition, USCIS works closely with the DHS Office for Civil Rights and Civil Liberties to ensure that the protection of civil rights and civil liberties is appropriately incorporated into the E-Verify program.

Section 404(d) of Title IV, subtitle A of IIRIRA (8 U.S.C. § 1324a note), requires USCIS to design and operate the E-Verify system to have reasonable safeguards against the use of the system resulting in unlawful discriminatory practices. Section 274B of the INA (8 U.S.C. § 1324b), however, designated OSC as the government entity to enforce the provisions on unfair immigration-related employment practices. To facilitate OSC's oversight capabilities as it relates to unfair immigration-related employment practices, paragraph 4.b of the MOA with OSC provides for USCIS to refer potential discrimination matters that might fall under OSC's preexisting authority (or the Equal Employment Opportunity Commission's authority) for action.

Upon referral, OSC makes a determination as to whether it has jurisdiction over the matter, and only investigates in instances in which it does have jurisdiction. In turn, OSC has begun to refer instances of non-discriminatory potential misuse or abuse by employers that come to OSC's attention through its investigations and telephone hotline intervention program to the USCIS Monitoring and Compliance Branch. The MOA has allowed for greater cooperation between the agencies rather than re-designating enforcement authorities.

Question#:	16
Topic:	E-Verify
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
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Question: What is the latest on employers being able to use a photo tool along with identification provided by the applicant?

Response: We recognize that some workers without work authorization use stolen identities to obtain employment, and that this is a problem that must be further addressed. To help do that, the E-Verify program introduced a photograph screening capability into the verification process in September 2007. The photo tool allows a participating employer to check the photos on Employment Authorization Documents (EAD) or Permanent Resident Cards (green cards) against images stored in DHS databases. This allows employers to determine if the document presented by the employee as a DHS document is a fabrication or has been subject to photo-substitution. Through use of the photo tool, thousands of cases of document and identity fraud have been identified and unauthorized workers have been prevented from obtaining employment. In September 2010, USCIS expects to add U.S. passport photos to the E-Verify system, allowing employers to compare passport photos presented by an employee during the verification process to the photo on record with the government. Further, USCIS is actively engaging with data partners to gain access to more identification photos to further enhance the E-Verify photo tool capabilities.

Question: Have you been able to access state driver's license photos? If not, do you plan on incorporating those databases to further enhance E-Verify?

Response: Unfortunately, we have not yet been able to access any state driver's license photos for use in the E-Verify photo tool initiative. USCIS does not have the authority to compel states to provide this data. However, USCIS is continuing to work diligently to enhance the E-Verify system with access to additional data from state motor vehicle administrations through the American Association of Motor Vehicle Administrators Records and Images from DMVs for E-Verify (AAMVA RIDE) project. We are working with several states on this initiative and are close to securing an agreement to verify specific state driver's license data (but not photos) to allow employers to check the authenticity and validity of driver's licenses as part of the E-Verify process. USCIS expects that a successful AAMVA RIDE pilot will lead to further data and photo verification.

Question: As an alternative, do you support the creation of a biometric identification card to be issued to all Americans and legal workers in the country as set forth in the Schumer proposal?

Response: USCIS takes seriously the issue of identity theft and looks forward to continuing to work with Congress on the best approach to verifying identity and detecting and deterring identity fraud.

Question#:	17
Topic:	DREAM Act
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: On April 21, Senators Lugar and Durbin sent you a letter asking you to grant legal status through “deferred action” to the potentially hundreds of thousands of aliens who would be eligible to be beneficiaries of the DREAM Act, were the DREAM Act to be made law.

Do you believe it is the place of the Executive Branch to de facto implement by fiat an immigration amnesty bill that failed in the previous Congress and that the current Congress has not chosen to debate in the 13 months since its most recent introduction, much less pass?

If you believe granting deferred action to all potential beneficiaries of the DREAM Act is justifiable because of the sympathetic circumstances surrounding the class of alien high-school graduates who would benefit from DREAM, wouldn't the same considerations compel granting deferred action to any sympathetic class of illegal aliens?

Would you support granting deferred action to the 1-3 million potential beneficiaries of the AgJOBS bill?

Response: DHS has the authority to grant deferred action based on the merits of cases while considering humanitarian circumstances and other factors in the interest of the Department's overall law enforcement mission. This discretionary authority, however, is implemented on a case-by-case basis and DHS does not grant deferred action without a review of relevant facts.

Question#:	18
Topic:	visa fraud
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: The Office of Fraud Detection and National Security (FDNS) was created in 2004 to detect, deter, and combat immigration benefit fraud and to strengthen USCIS efforts aimed at ensuring benefits are not granted to persons who threaten national security or public safety. How many people are currently employed as full-time adjudicators/investigators in the Office of Fraud Detection and National Security?

Response: FDNS has a total of 545 Officers, Intelligence Research Specialists and Immigration Analysts, including first-line supervisors, located in the field, service centers and at headquarters. FDNS does not employ adjudicators or investigators in the traditional sense. FDNS does not directly adjudicate benefit applications, but provides results and findings of administrative inquiries to Immigration Services Officers who then use that information to determine eligibility. Immigration and Customs Enforcement (ICE) conducts immigration-related criminal investigations.

Question: Can you tell us what FDNS is currently working on?

Response: On a daily basis FDNS employees receive and process fraud referrals, conduct site visits, conduct interviews, and interact with other government agencies to resolve national security, public safety, and integrity (fraud) concerns. During FY 2009, FDNS handled over 12,000 cases involving fraud, public safety, or national security concerns. FDNS Headquarters (HQFDNS) provided information or assistance to field offices on over 8,900 cases in FY2009. At the same time, HQFDNS Intelligence Analysts provided responses to over 200 Requests for Information from our partners in the law enforcement and intelligence communities. In order to facilitate and enhance communication with law enforcement and intelligence partners, FDNS has detailed officers to nine other government agencies, in 13 locations. In FY 2010, FDNS continues to provide services that are critical to quality adjudications as well as law enforcement and intelligence efforts.

Some specific FDNS current projects of particular importance include:

- Support of the Controlled Application Review and Resolution Program so that adjudicators can confidently adjudicate cases involving national security concerns.

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- Information sharing functions that facilitate the sharing of USCIS information with law enforcement and intelligence partners while also securing information for USCIS use.
- Implementation of the Administrative Site Visit and Verification Program (ASVVP). Currently, the ASVVP focuses on Religious Worker (immigrant and nonimmigrant) and H-1B petitions. Site visits are valuable tools in the detection and deterrence of fraud.
- Development of an overseas verification program which gives USCIS officers a more reliable mechanism for verifying facts, statements, and documents that originate overseas. To date, USCIS has positioned officers in two overseas offices, with plans to place at least two more during FY 2010.
- FDNS is engaged in the transformation effort, which will allow USCIS to better identify and track applications and petitions with fraud or national security concerns.

As previously noted in a response to a prior question posed, in January of this year, as a result of a top-to-bottom organizational review and realignment, I promoted FDNS to a Directorate level. This promotion puts the directorate head of our anti-fraud and national security programs at the leadership table and heightens our focus on this critical function.

Question: If not, will you submit a letter detailing the projects currently assigned to FDNS, and whether there is a rise in fraud in other visa categories.

Response: Response provided above.

Question#:	19
Topic:	L visa
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Concerns about L visa fraud have been widespread since the 2006 Inspector General report on the L visa category found it difficult for adjudicators to be confident that a firm truly intends to use an imported worker in such a capacity. The issue is compounded by adjudicators having little ability to evaluate the substantiality of the foreign operation.

Have you given guidance to your adjudicators on how to approach the issue of unknown foreign operations?

Response: Adjudicators are trained on the specific regulations and requirements for each visa classification. The "L" classification requires a petitioning U.S. organization to establish a relationship with a qualifying organization abroad. The relationship is based on: (1) ownership and (2) control. Ownership and control can be demonstrated through the submission of paper documentation such as stock certificates or financial statements. Additionally, the petitioner is required to submit a statement to support the facts of the petition. This documentation generally indicates the legitimacy of the petitioning entity's foreign operations. If the required documentation does not meet the petitioner's burden of proof, adjudicators are trained to send the petitioner a request for additional evidence to obtain needed documentation to support the relationship with a qualifying organization abroad.

In response to fraud concerns, adjudicators can refer all cases in which fraud is suspected to their respective fraud unit for analysis and/or an overseas verification process. The fraud unit has two processes in place to verify overseas information pertaining to overseas corporations: (1) A documentation verification request is sent to the Department of State's fraud unit or (2) a document verification request is made to an independent information provider, Dunn and Bradstreet (D&B). Both of these methods are used in cases where an adjudicator suspects fraud based on the evidence presented with the petition.

USCIS will soon launch a comprehensive tool that will be used in a number of employment-based petition adjudications, including "L" petitions. This program is known as the Validation Instrument for Business Enterprises (VIBE) Program. USCIS will begin beta-testing the VIBE Program this June. VIBE is a web-based tool for adjudicators that uses commercially available information from an Independent Information Provider (IIP) to validate information submitted by companies or organizations who petition to employ alien workers. USCIS granted a contract to D&B

Question#:	19
Topic:	L visa
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

to serve as the independent information provider for the VIBE Program. VIBE will provide adjudicators with company/organization information. In the "L" context, VIBE will assist adjudicators in determining whether a petitioning U.S. corporation is affiliated with a foreign corporation.

Question: Do you think the denial of a visa for lack of supporting documentation of a foreign company is warranted?

Response: Yes, denial of a "petition" for L classification is appropriate when there is lack of supporting documentation of a foreign corporation.

Question: How many, or what percentage, of L visa petitions have been approved to companies we cannot fully evaluate the substantiality of the foreign operation?

Response: USCIS will not approve a petition unless there is evidence, as required by the regulations, that the petitioner is or will be doing business as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee. The definition of doing business does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

Question#:	20
Topic:	religious workers
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Originally enacted in 1990, the Special Immigrant Non-Minister Religious Worker Visa Program allows up to 5,000 religious workers who are not ministers to permanently immigrate to the U.S. annually. A 2006 review of the program found of the 220 religious worker petitions audited, 72 resulted in a finding of fraud.

After the report was filed, and the rate of fraud was determined to be extremely high, are you aware if all prior recipients of the immigrant visa were site-visited?

Response: USCIS has not site-visited all prior recipients of special immigrant visas for religious workers. However, petitions for religious workers that were approved between March 1, 2003 and September 30, 2006 were reviewed if the same petitioner filed a subsequent religious worker petition or petitions on or after October 1, 2006 and the subsequent petition or petitions resulted in the execution of a compliance review and the petitioner failed the compliance review.

Question: Were the 72 petitioners that were denied because of fraud deported?

Response: USCIS does not have an up-to-date report on the status of the 72 fraud cases. We provided the information on these cases to Immigration and Customs Enforcement (ICE). ICE is responsible for removal proceedings.

Question#:	21
Topic:	TPS - 2
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Temporary Protected Status (TPS) is intended to provide temporary immigration status to eligible nationals of a certain country designated by the Secretary of DHS because that country has experienced temporary negative conditions. Currently, countries designated with TPS status include: El Salvador, Haiti, Honduras, Nicaragua, Somalia, and Sudan.

On May 5, 2010, DHS announced a 6-month extension of TPS for nationals of Nicaragua and Honduras due to claims of devastation caused by Hurricane Mitch in 1998 still persisting and preventing these countries from adequately handling the return of its nationals.

While I understand the devastation caused by these natural disasters is often very difficult on its people, I am hesitant to believe these countries are unable to handle the return of its nationals. I am also troubled by the mental stress the foreigners are put through by staying in the U.S. for more than 12 years knowing that this is supposed to be a temporary stay, but hoping this status will continue to get renewed, as it has done for quite some time.

What effect has the 1998 hurricane had on the governments of Nicaragua and Honduras that prevents them from taking its citizens back today?

Response: During the past year, in accordance with section 244 of the Immigration and Nationality Act (the Act), DHS and the Department of State (DOS) reviewed conditions in Honduras and Nicaragua to determine whether the conditions for these countries' TPS designations continue to be met. Based on this review, the Secretary of Homeland Security determined that an 18-month extension of both countries' TPS designations was warranted because the conditions that prompted the initial TPS designations of both countries in 1999 following the environmental disaster caused by Hurricane Mitch persist today such that there continues to be a substantial, but temporary, disruption of living conditions in Honduras and Nicaragua that temporarily prevents these countries from being able to adequately handle the return of their nationals. The specific country conditions supporting this determination are detailed in the TPS Notices for Honduras and Nicaragua that were published in the Federal Register on May 5, 2010. The links for these Notices are provided below:

Question#:	21
Topic:	TPS - 2
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Honduras – 75 FR 24734

<http://edocket.access.gpo.gov/2010/pdf/2010-10620.pdf>

*Please take special note of the sections titled “Why is the Secretary extending the TPS designation for Honduras through January 5, 2012?”

Nicaragua – 75 FR 24737

<http://edocket.access.gpo.gov/2010/pdf/2010-10619.pdf>

*Please take especial note of the sections titled “Why is the Secretary extending the TPS designation for Nicaragua through January 5, 2012?”

Question: Do you believe the longer they stay in the U.S., the better it is for them?

Response: The decision whether an extension of a country’s TPS designation is warranted is guided by specific statutory criteria established by Congress and delineated in section 244 of the Act. For designations based on an environmental disaster, the assessment focuses on the persistence of a substantial disruption in living conditions in the affected areas and the country’s continued inability to handle adequately the return of its nationals. Any eligible national from a TPS-designated country who does not believe it is in his or her best interest to remain in the United States neither is required to apply for TPS nor is prevented or discouraged from returning to his or her country of nationality.

Question: What steps, if any, are being taken to remind the recipients of TPS that their stay is in fact temporary, regardless of any American born children they may have?

Response: In every publicly released document or internet posting targeting potential TPS beneficiaries, the period of the TPS designation, including its end date, is clearly highlighted. For instance, in the first sentence of the Federal Register Notice announcing the extension of Honduran TPS, it is unambiguously stated that the extension runs from July 5, 2010, *through January 5, 2012* (emphasis added). Noting the designation’s expiration date is intended, in part, to send a clear message that Temporary Protected Status is not a permanent status.

Additionally, in these same documents and internet postings, it is clearly stated that the granting of TPS does not, in itself, lead to a permanent status. The Federal Register Notice further states that, upon expiration, TPS beneficiaries will revert to the same

Question#:	21
Topic:	TPS - 2
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

immigration status they held before TPS or to any other status they may have obtained while registered for TPS. Publicly available material relating to TPS designations do not specifically address the effect of U.S.-born children on a TPS beneficiary's immigration status. Additionally, TPS beneficiaries who also are authorized to work in the U.S. have their work authorization tied to the date when TPS is set to expire.

Question#:	22
Topic:	EB5
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: The U.S. Court of Appeals for the Ninth Circuit held in 2003 that legacy INS acted improperly in retroactively applying new interpretations of the EB-5 program in 1998 that changed the terms of the Chang plaintiffs' investments. Despite that holding, the case still lingers six years later, upsetting the lives of over 100 EB-5 investors and their families. These EB-5 investors and their families are stuck in legal limbo. The case is casting a pall over the entire EB-5 program. If the government is unwilling to settle the case, a legislative solution may be necessary. What are your views on this?

Response: The Ninth Circuit remanded the case for further litigation in the district court. The case remains pending in the district court, and the plaintiffs have recently asked the court to permit the filing of a fourth amended complaint that relates to the plaintiffs' eligibility for naturalization. Since this case is pending, USCIS cannot discuss the specifics of the case or the issues involved in that litigation. DHS is working to publish a proposed rule implementing the EB-5 provisions of Pub. L. No. 107-273 as soon as possible, although it appears unlikely that this will occur in July 2010, as previously indicated in the DHS Regulatory Agenda.

Question#:	23
Topic:	fraud - 2
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: What ability do adjudicators at USCIS have to verify information contained in applications for benefits and what efforts are routinely made to verify material facts alleged in applications?

Response: USCIS uses different processes for different benefits, but all involve a review of the application and any supporting documentation. USCIS can request supplemental documentation as warranted. Certain application types require an interview of the applicant prior to final adjudication of the benefit. In such cases, USCIS Immigration Service Officers (ISOs) have a responsibility to place the applicants under oath and ask a series of questions to verify the information provided on their applications. ISOs may cross-reference information provided on applications with DHS systems that house specific information on aliens entering and exiting the United States, criminal histories, immigration histories, etc. ISOs may also utilize other tools available to government and law enforcement entities that provide access to public records data which may assist in verifying the information provided on applications. In cases where fraud is suspected, ISOs may refer them to FDNS for further checks, site inspections, or other inquiries; or in some cases, ISOs send requests to overseas offices to verify information through civil registries and other foreign government sources.

Question: Does USCIS keep a track record of the percentages of cases in which fraud is suspected?

Response: USCIS has developed two tools to track fraud levels: The Fraud Detection and National Security Data System (FDNS-DS) and Benefit Fraud Compliance Assessments (BFCAs).

FDNS-DS is a case management system that tracks fraud and national security cases within USCIS. In cases where fraud is articulated, the case information is entered in FDNS-DS.

USCIS has conducted BFCAs on several benefit programs believed particularly vulnerable to fraud. We are working to enhance the quality of our BFCAs, and we intend to continue development of BFCAs and other fraud studies to determine the volumes and types of fraud in immigration benefits applications and petitions.

Question: What is the procedure that is routinely followed if an adjudications officer

Question#:	23
Topic:	fraud - 2
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

finds evidence of fraud?

Response: USCIS has issued standard operating procedures (SOPs) for the processing of fraud cases, and is constantly working to update those procedures. Generally, if an ISO discovers evidence of fraud in a particular case, the ISO will refer the case to the local FDNS-IO. After initiating the fraud lead in FDNS-DS, the FDNS-IO researches the lead and if the fraud is validated, records the findings in FDNS-DS. (If the fraud is not validated, the case is returned to the ISO for an adjudicative decision.) In some cases, the FDNS-IO may conduct an interview or site inspection to uncover additional information in order to aid in the adjudicative decision or the evaluation of the fraud referral. The FDNS-IO may also contact other government or law enforcement agencies to gather information that assists in the determination of the fraud associated with an application. Upon validating or invalidating the fraud concern, the FDNS-IO will create a Summary of Findings and return the case to the ISO for an adjudicative decision. USCIS will refer certain cases to ICE for investigation prior to adjudication of the application by USCIS.

Question: When an alien is found to have been involved in a marriage fraud or other fraud scheme to game the immigration bureaucracy, what efforts are done as a matter of routine to prosecute the citizen petitioner and prosecute or at least seek the removal of the alien found to be involved in that fraud scheme? How often does ICE work with USCIS to achieve these goals and is there any formalized mechanism to make this happen?

Response: ICE detects, deters, and prosecutes those who exploit the immigration system through the perpetration of benefit fraud schemes including marriage fraud. The U.S. citizen spouse, the alien spouse, and the broker who participate in marriage fraud violate federal criminal statutes and can be prosecuted and, if convicted, incarcerated. These prosecutions help raise awareness about marriage fraud and serve as a deterrent for those considering committing this crime. If ICE arrests a removable alien as part of its investigation, ICE will place that alien into administrative removal proceedings. Through the ICE-led Document and Benefit Fraud Task Forces, ICE works with USCIS regularly on benefit fraud investigations, including marriage fraud. ICE and USCIS entered into an enhanced memorandum of agreement (MOA) in September 2008.

Question: What percentage of applications is referred to the investigators at USCIS or to ICE?

Response: Pursuant to a 2008 Memorandum of Agreement (MOA) with ICE, USCIS refers to ICE certain cases that meet the criteria established in the MOA. This referral protocol allows USCIS to process most fraud cases administratively, and refer to ICE only those cases that are most likely to result in criminal investigation and prosecution. For example, in FY 2009, of those employment based and spouse petitions that were referred to FDNS, 9.6% were referred to ICE.

Question#:	24
Topic:	time
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: On average, how long does it take an adjudicator to process an application for permanent resident alien status and how long does it take for an application for United States citizenship to be processed?

Response: The average processing time for Form N-400, Application for Naturalization is 5 months.

The average processing time for Form I-485, Application to Register Permanent Residence or Adjust Status (family-based) is 4.2 months.

The average processing time for Form I-485, Application to Register Permanent Residence or Adjust Status (employment-based) is 7 months.

Question#:	25
Topic:	effort
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: How often are naturalized citizens de-naturalized because it was subsequently determined that they had committed fraud in their applications and what effort is expended to conduct post-audit investigations?

Response: While USCIS grants applications for naturalization, U.S. Immigration and Customs Enforcement (ICE) is generally the agency that handles referral of cases for civil or criminal denaturalization as discussed below. ICE does not collect data or maintain a database on the frequency in which naturalized citizens are denaturalized based on fraudulent claims in their naturalization applications.

The Department of Justice (DOJ) is responsible for prosecuting individuals in both criminal and civil denaturalization cases. ICE coordinates and screens potential civil and criminal denaturalization cases, and refers the cases to either DOJ's Office of Immigration Litigation (DOJ-OIL) for civil prosecution or the United States Attorney's Office for criminal prosecution. Cases of individuals suspected of participation in human rights violations are referred by ICE to DOJ's Human Rights and Special Prosecutions Section (HRSP) for criminal or civil prosecution in conjunction with the United States Attorney's Offices. If a naturalized citizen is denaturalized, USCIS is responsible for cancelling an individual's naturalization certificate, while the Department of State is responsible for canceling the individual's passport.

Question#:	26
Topic:	databases
Hearing:	Oversight of USCIS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: What databases are checked before an application for an immigration benefit especially for the conferring of resident alien (lawful immigrant) status or United States citizenship is adjudicated? Is this mandatory or optional?

Response: When adjudicating an Application to Register Permanent Residence or Adjust Status- Form I-485 or an Application for Naturalization- Form N-400, USCIS conducts the following mandatory checks:

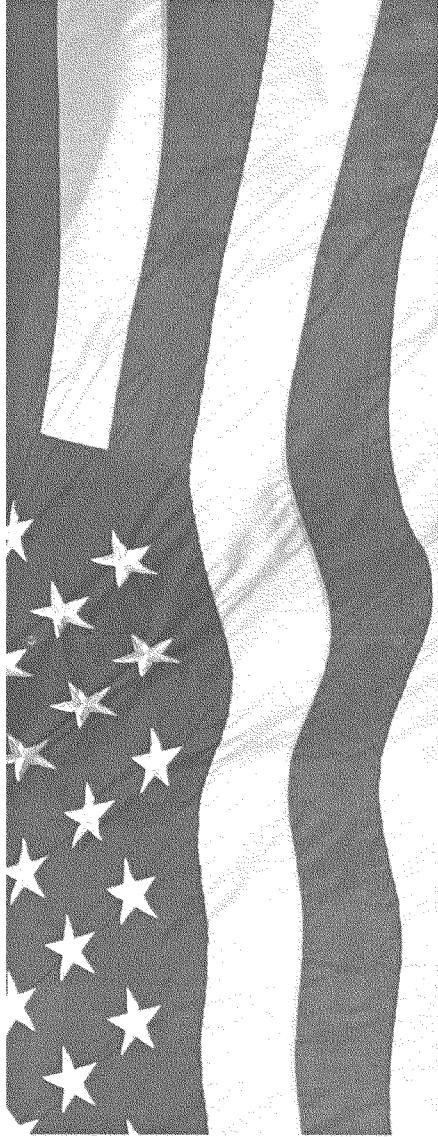
FBI Name Check – These checks are run by the FBI’s National Name Check Program (NNCP). Information from FBI files is disseminated in response to name check requests received from federal agencies, including internal offices within the FBI; components within the legislative, judicial, and executive branches of the federal government; foreign police and intelligence agencies; and state and local law enforcement agencies within the criminal justice system. The NNCP conducts manual and electronic searches of the FBI’s Central Records System (CRS) Universal Index (UNI). The CRS encompasses the centralized records of FBI Headquarters, field offices, and Legal Attaché offices. The CRS contains all FBI investigative, administrative, personnel, and general files.

FBI Fingerprint Check – These checks are officially called FBI Identification Records and often referred to as a Criminal History Record or Rap Sheet. These records contain a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, federal employment, naturalization, or military service. If the fingerprints are related to an arrest, the Identification Record includes name of the agency that submitted the fingerprints to the FBI, the date of arrest, the arrest charge, and the disposition of the arrest, if known to the FBI. All arrest data included in an Identification Record is obtained from fingerprint submissions, disposition reports and other reports submitted by agencies having criminal justice responsibilities.

TECS Check – TECS, a system maintained by U.S. Customs and Border Protection (CBP), is a database that contains enforcement, inspection, and intelligence records relevant to the antiterrorism and law enforcement mission of CBP and the numerous federal agencies that it supports. TECS contains information from multiple agencies, databases, and system interfaces relating to national security risks, public safety issues, current or past targets of investigations, and other law enforcement concerns.

Question#:	26
Topic:	databases
Hearing:	Oversight of USCIS
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TECS provides access to the FBI's National Crime Information Center (NCIC) and allows its users to interface with all 50 U.S. states via the National Law Enforcement Telecommunications System (NLETS).



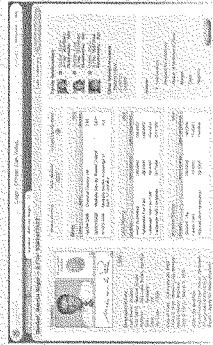
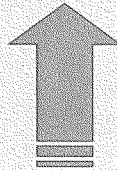
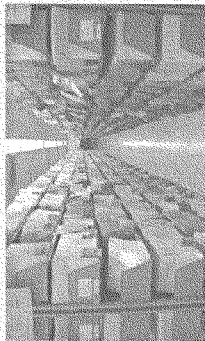
USCIS Transformation

July 12, 2010



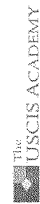
What is Transformation?

USCIS is building an immigration service for the 21st Century



From a decentralized,
paper-based process...

...to an electronic adjudication process
easily accessible to employees and
customers



Transformation Stakeholders Benefits

VALUE TO CUSTOMERS

- More efficient and secure benefits processing
- Online access to application information
- Online access to appointment scheduling

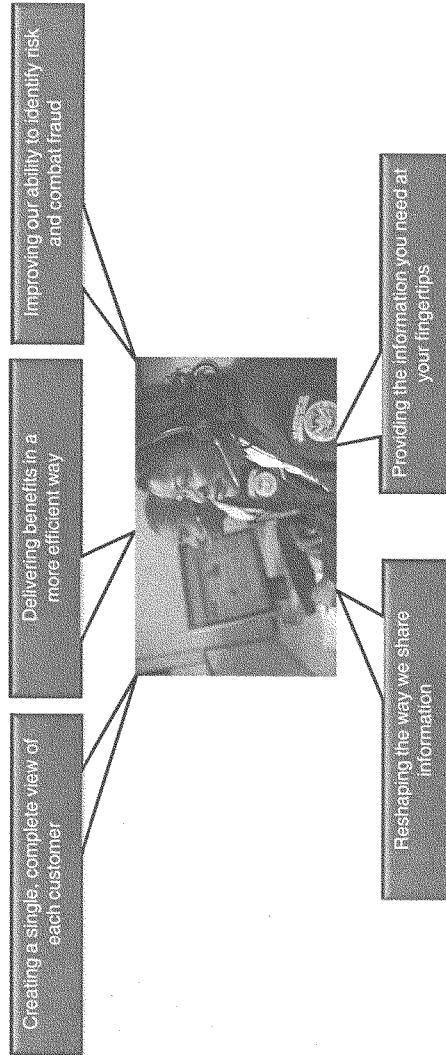


VALUE TO FEDERAL PARTNERS

- Improved access to information among interagency partners
- Quick, online access to reliable information
- Improved use of biometrics and identity management



Employee Benefits



Transformation Will Focus on Five Areas

The Transformation solution has been designed and organized into 5 areas of business activity called management functions.

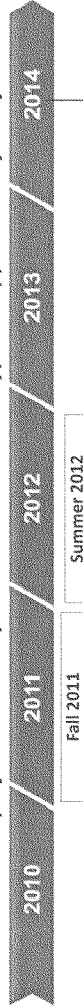
Management Function	Business Activities Addressed
Immigration Account Management	• Account Management • Biometric Collection • Enumeration • Identity Verification
Benefits Case Management	• Case File Management • Decision Support • Eligibility Assessment • Interviews • Testing • Oath Ceremony
Electronic Content Management	• Benefit Production • Document Management • Records Management • Digitization • Notification
Risk and Fraud Management	• Background Checks • Document Verification • Fraud Detection • Risk Assessment
Agency and Knowledge Management	• Communication Management • Report Management • Performance Management • Business Operations • Scheduling • Fee Processing



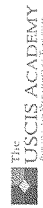
5

How Long Will It Take?

All five capabilities will be deployed next year to support non-immigrant benefit types. Current plans estimate full deployment of all capabilities for all benefit types in approximately five years.



	2010	2011	2012	2013	2014
 Immigration Accounts		Immigration accounts will be created for customers and will be accessible online	Accounts will be created for organizations, such as employers and law firms	Accounts for all parties that interact with USCIS will lead to more efficient, transparent interaction	
 Case Management		Thousands of benefit applications per year will be submitted and managed online	Online case management will expand to include additional benefit types, reaching thousands more	Approximately 2 million applications per year will be submitted and managed online	
 Electronic Content Management		Critical information and evidence will be easily accessible because it is managed electronically	Electronic information management will expand to support additional benefit types	Easier, faster access to critical information will increase accuracy and decrease processing times	
 Agency & Knowledge Management		Employees will have support for decisions and tools to manage workload	Knowledge management will expand to include additional benefit types	All employees will always have the latest, most complete information needed to inform and support their decisions	
 Risk & Fraud Support		New tools will facilitate risk and fraud identification	Risk and fraud support will expand to include high-risk benefit applications	Risk and fraud prevention will increase substantially as detection and accuracy rates increase	



6

Benefit Requests Impacts					
2011		2012		2013	
Accounts and Case Management		Extended Accounts and Case Management		Immigrant Humanitarian Citizenship	
United all capabilities for nonimmigrant benefit types		Add upgrades, enhance capabilities and launch to all other lines of business			
- I-20 - I-90 - I-102 - I-131 - I-134 - I-250 B - I-508 - I-539 - I-566 - I-601 - I-612 - I-765 - I-821 - I-824 - AR-11 - DS-2019 - G-28		- I-129 - I-129S - I-192 - I-612 - I-854 - I-905 - I-907 - I-914 - I-918 - I-929	- I-130 Child, Spouse, Total - I-130 Imm Relatives, Preference - I-140 Imm Wkr, HK - I-193 - I-360 - I-407 - I-485 Reg, Cuban, Empl, Family, Indo-Chinese, Other - I-526 - I-687 - I-698 - I-751 - I-817 - I-829	- I-485 Asylee, Refugee - I-589 - HRIFA - I-590 RFR - I-602 - I-690 - I-730 (incl. V92N93)	- N-300 - N-336 - N-400 Natz, Child, Mil, Dep Child, Dep Spouse, Principle Vet - N-470 - N-565 - N-600/600K - I-600/600A - I-800/800A
Receipts (FY08)	2,318,194 (48%)	405,307 (8%)	1,350,869 (28%)	131,925 (3%)	640,010 (13%)
Completions (FY08)	2,912,048 (45%)	462,490 (7%)	1,553,652 (24%)	211,513 (3%)	1,329,905 (21%)
					4,846,305
					6,469,608

*Receipts & Completions totals reflect figures for only those forms that appear in bold; these figures are derived from the USCIS Operational Overview as of February 23, 2009. The list of forms for Releases A and B come from the 11/23/2008 HPT memo; the list of forms for Releases C-E is derived from analysis conducted for the Stakeholder Management Plan.

SUBMISSIONS FOR THE RECORD

STATEMENT OF MICHAEL W. CUTLER, SENIOR SPECIAL AGENT, INS (RET.) FOR
INCLUSION INTO THE RECORD OF HEARING "OVERSIGHT OF U.S. CITIZENSHIP AND
IMMIGRATION SERVICES" CONDUCTED BY THE SENATE JUDICIARY COMMITTEE ON
MAY 11, 2010

Our nation is currently facing an unparalleled immigration crisis. This crisis profoundly impacts nearly every significant challenge that is confronting our nation. Everything from national security and criminal justice to the economy, the environment, healthcare and education is getting hammered by our nation's failures to secure its borders and create an immigration system that has real integrity.

Much has been made about the porous borders through which millions of illegal aliens have succeeded in entering our country and certainly remains a major threat to the safety of our citizens and the security of our nation. Aliens who circumvent the inspections process are not simply people who lack documents, as the term "Undocumented" would make it appear. Aliens who circumvent the inspections process are not the equivalent of a motorist who fails to pay a toll before driving over a toll bridge. The inspections process is the means by which employees of CBP (Customs and Border Protection) seek to prevent the entry of aliens into our country whose presence in our country would be harmful to our nation and/or our citizens.

Among the categories of aliens whose entry into our country is proscribed are aliens who suffer from dangerous communicable diseases, aliens who have been convicted of felonies, aliens engaged in smuggling and aliens who are involved in terrorism.

The problem is that when an alien circumvents the inspections process there is no way of knowing if that alien is simply seeking to violate the administrative provisions of the Immigration and Nationality Act (INA) by seeking illegal employment, or if the alien in question is wanted for committing serious crimes in another country and is evading law enforcement authorities in that other country. There is no way of knowing if the alien is involved in criminal or terrorism-related activities and is seeking to enter the United States to commit serious crimes such as those involving violence, narcotics or other felonies. There is no way of knowing if the alien is seeking to enter our country to commit crimes in the United States to secure money to be used in furtherance of terrorist goals in the United States or elsewhere, or embed himself in our nation as a "sleeper agent" and will seek to embed himself in our country while he (she) awaits a phone call or other communication advising him as to what needs to be done to assist in the commission of a terrorist attack.

The inspections process, as I am certain you must recognize, is not a mere formality but represents what should be a serious line of defense to protect our nation and our citizens. This is why I have come to say that the difference between a lawfully admitted immigrant and an illegal alien is comparable to the difference between a houseguest and a burglar.

My perspectives are not based on conjecture but are, rather, based on my experiences as an employee of the former INS.

As you may know, I was employed by the former INS for approximately 30 years, having begun my career as an Immigration Inspector assigned to John F. Kennedy International Airport in New York in October of 1971. I remained in that position until I became a Criminal Investigator (Special Agent) in 1975 where I rotated through all of the squads within the Investigations Branch at the New York

District Office. I was additionally assigned to the Unified Intelligence Division of the Drug Enforcement Administration's New York Field Office from 1988 until 1991 when I was promoted to the position of Senior Special Agent and assigned to the Organized Crime Drug Enforcement Task Force, a position in which I remained for the balance of my career with the INS.

As an Immigration Inspector I was responsible for applying the immigration laws of our nation in deciding on whether or not to admit aliens into the United States. This position also required me to process applications for various immigration benefits including applications filed by aliens who had been admitted into the United States as nonimmigrant visitors for pleasure and sought to gain additional time in our country or to change their nonimmigrant status to that of student or some other category of nonimmigrant. I also adjudicated applications for the replacement of lost alien Registration Receipt Cards and for the issuance of Reentry Permits.

By adjudicating these applications I was provided with a unique opportunity to see the way the INS, back then, dealt with the routine adjudications process.

In 1973 I accepted a temporary assignment to the I-130 Unit for a period of one year, to participate in a pilot program to seek to uncover fraud in the applications for residency filed by United States citizen and resident alien spouses of aliens to whom they were married. The purpose of this program was to identify those aliens whose marriages were nothing more than business arrangements in which the U.S. citizen or resident alien spouses were paid to engage in a marriage of convenience and file an I-130 petition on behalf of the aliens seeking a green card and potentially, a pathway to United States citizenship.

The goal of the pilot program was to attempt to create an environment that would discourage the filing of applications for residency that involved fraud. Many fraud marriages were thus uncovered, along with a number of rings that made a mockery of the process.

As an INS Special Agent I investigated and arrested aliens whose violations of law simply involved their having entered our country without inspection or overstayed their authorized period of admission to seek illegal employment to aliens who had committed a wide variety of felonies ranging from murder, rape, robbery, weapons possession, narcotics trafficking and alien smuggling to crimes committed in conjunction with the objectives of terrorist organizations.

Because of my background I have truly seen the immigration crisis that confronts our nation today from a front row seat.

Clearly our nation's borders must be secured. But this is only one of many steps that must be taken if our nation is to live up to its mandate of protecting the survival of our nation and providing for the safety and security of our citizens.

If you consider the way that a responsible homeowner secures his home and his possessions and the safety of his family members from intruders, you can see that our nation needs to develop a comparable game plan. This is not an unreasonable analogy when you consider that time and again a green card and especially United States citizenship have been referred to as the "Keys to the kingdom."

Our nation makes virtually no distinction between the United States citizen who acquired his citizenship by being born in the United States as compared with the alien who acquired his (her)

citizenship via the naturalization process. In point of fact, Arnold Schwarzenegger, the governor of the most populace state of our nation is a naturalized citizen. Indeed, the only official positions a naturalized citizen may not hold are the positions of President and Vice President of the United States.

The illegal aliens who manage to run our nation's borders are comparable to an individual who manages to break into a home by crawling through a window left open at the rear of the house.

The alien who manages to commit immigration fraud and game the bureaucracy at United States Citizenship and Immigration Services, is the equivalent of the burglar who manages to secure a copy of the key to the front door of the home he has targeted for illegal entry.

When you park your car in a garage where attendants park the car for you, there are almost invariably signs posted warning patrons to not leave any keys other than the ignition key. The obvious first concern is that you don't want to have a larcenous employee of that garage rummaging through your glove compartment or trunk and possibly steal any of your valuables. Additionally, the potential exists that a dishonest garage employee might make a copy of your house key and be able to determine your address by running your license plate. Such criminals would not have to force their way into their victim's home but would be able to simply walk through the front door with a key they were able to produce.

Many such burglary rings have, in fact, operated out of parking garages over the years.

Recently police in an affluent community north of New York City discovered that electronic garage door openers had been stolen from expensive cars. The thieves only stole the garage door openers. This was an obvious variation of the tactic employed by the dishonest parking garage employees- the goal being to find a way of gaining access into a victim's home without having to use force.

Several weeks ago my car was broken into and my son's backpack was stolen. It contained the keys to our home and his backpack had documents that included our home address. Out of an abundance of caution and commonsense, we immediately had the locks on our house changed.

Time and again news reports have detailed how aliens from countries all over the world have been able to game the immigration bureaucracy in order to gain visas and/or acquire lawful immigrant status and even United States citizenship by committing fraud. Time and again the GAO and the OIG have provided reports issued pursuant to investigations that disclosed the ways in which criminals and terrorists, including individuals engaged in espionage have easily gamed the immigration bureaucracy of USCIS to acquire resident alien status and then even United States citizenship as an integral component of their strategy to acquire a job that involved a security clearance or provided access to a secure location. We have seen where an alien who committed marriage fraud was able to ultimately secure a job as an FBI Special Agent and then went on to secure a position at the CIA.

In November of 2006 the GAO issued a report that included the incredible lapse of judgement, or worse, where purportedly some 111,000 immigration alien files were reportedly lost and yet each and every application for an immigration benefit that related to those missing files were adjudicated without those critically important files, including 30,000 aliens who were naturalized even though the adjudications officers were not provided with those files when they adjudicated those applications.

In January 1993 a citizen of Pakistan by the name of Mir Amal Kanshi stood outside the main gate of the

Central Intelligence Agency and opened fire with an AK-47 on the vehicles being driven into parking lot by CIA officials arriving for work that winter morning. When the shooting stopped, two CIA officers were dead and three others were seriously wounded. Kansi had managed to game the bureaucracy at the old INS and was granted political asylum even though he had committed fraud.

The very next month, the World Trade Center was attacked by aliens who had also gamed the immigration bureaucracy at the old INS.

On September 1, 2006 I was called to testify before the House Judiciary Committee hearing on the issue of "Comprehensive Immigration Reform."

Here is an excerpt from my prepared testimony that illustrates the seriousness of immigration benefit fraud that was not addressed by the INS:

"A notable example of such a terrorist can be found in a review of the facts concerning Mahmud Abouhalima, a citizen of Egypt who entered the United States on a tourist visa, overstayed his authorized period of admission and then applied for amnesty under the agricultural worker provisions of IRCA. He succeeded in obtaining resident alien status through this process. During the 5 year period he drove a cab and had his license suspended numerous times for various violations of law and he ultimately demonstrated his appreciation for our Nation's generosity by participating in the first attack on the World Trade Center in 1993 that left six people dead, hundreds of people injured and an estimated one-half billion dollars in damages inflicted on that iconic, ill-fated complex.

America had opened his doors to him so that he might participate in the American dream and he turned that dream into our worst nightmare. The other terrorists who attacked our Nation on subsequent attacks, including the attacks of September 11, 2001, similarly exploited our generosity, seeing in our Nation's kindness, weakness, gaming the immigration system to enter our country and then hide in plain sight among us."

Time and again we have seen how ineptitude at the INS and now at USCIS creates major vulnerabilities for our nation and our citizens.

I previously noted how an individual by the name of Kansi had managed to game the system to gain political asylum before he attacked CIA officials. You would think that the lessons should have, by now, been learned. Immigration fraud is not a victimless crime. Yet consider that recently ICE (Immigration and Customs Enforcement) issued a press release into the arrest and prosecution of a 23 year old man from Eritrea.

Please consider this excerpt from that press release:

"According to plea documents, from at least June 2007 until approximately January 2008, Fessahazion was the Guatemalan link of an alien smuggling network that spans East Africa, Central and South America. Specifically, Fessahazion illegally entered the United States at McAllen, Texas, on March 20, 2008. He applied for asylum on Sept. 30, 2008, claiming in his application that he was traveling across Africa in 2007 and 2008, fleeing persecution in Eritrea. However, Fessahazion was actually in Guatemala during that period facilitating the smuggling of East African aliens to the United States.

Fessahazion was granted asylum by the United States on Nov. 13, 2008."

Clearly our officials know that immigration benefit fraud has figured prominently in a number of terrorist attacks or thwarted terrorist attacks. Aliens have managed to game the system by claiming "credible fear" and thus being granted political asylum. In some instances this has enabled terrorists to embed themselves in our country. Yet Mr. Fessahazion was easily able to violate our nation's porous borders numerous times and then game the immigration bureaucracy in 2008 to acquire political asylum. It should be presumed that he was easily able to cross the border between the United States and Mexico with his immigration document provided by USCIS less than 2 years ago. His application for asylum was processed in under six weeks. This certainly raises many questions starting with the most fundamental- how thoroughly was his claim of "credible fear" investigated? The false claim he made about credible fear concerned a country on the other side of the planet and in under six weeks his false claim was rewarded when he was granted political asylum.

I would remind you that Kansi's attack on the CIA occurred more than 14 years before Fessahazion filed his fraudulent application for political asylum. This apparently illustrates that the lessons that should have been learned by a government agency that has clear national security implications were not.

This case is only one of a long list of cases in which immigration benefit fraud provided opportunities for criminals, terrorists and spies to embed themselves in our country and conduct operations that were detrimental to the security of our nation and the safety of our citizens.

In listening to the testimony and the responses of USCIS Director Alejandro Mayorkas to questions posed by Senator Orin Hatch, it became clear to me that many of the issues concerning the adjudications process and the integrity of the system still lacks the resources and the abilities to create a system that has real integrity when it has been made abundantly clear that immigration fraud has facilitated terrorist attacks that were committed on American soil and other attacks that were thwarted by effective work by our law enforcement officials while still other attacks failed because of the ineptitude of the terrorists. As I noted in a recent commentary I wrote, "If hope is not a strategy then dumb luck is not a success."

We should never take comfort when our enemies fail because of their ineptitude. The most recent attack at Times Square is a good example of such a failure of the terrorist who, but for the failure of his explosives, might have killed many and wounded still more.

Having touched on the national security implications of the immigration benefits program I think it is worth considering another issue; the H-1B temporary visa program that has also failed in its mission to protect the jobs of American workers. Faisal Shahzad, the "Times Square Bomber" had on multiple occasions apparently gamed the immigration benefits program including the fact that he had secured an H-1B visa as an accounting clerk. This also points out another fundamental failure of this program.

Prior to the Second World War, the enforcement and administration of the immigration laws was the responsibility of the United States Labor Department. The concern was that the influx of massive numbers of foreign workers might have an adverse impact on the jobs, salaries and working conditions of American workers who were supporting themselves and their families. The underlying concept of what came to be called the "American Dream" was that each generation of Americans, in providing greater educational opportunities for their children would enable each succeeding generation to live more successful lives than did their parents.

On a personal note, my own mother legally immigrated to the United States as a teenager several years before the onslaught of the Holocaust that caused the slaughter of so many people including members of my own family- my mother's mother among them and for whom I was named. My mother lived in a rooming house and worked in an umbrella factory when she first arrived in the United States and was paid just three dollars per week. She never had the opportunity to gain an education. She never completed public school. My dad was born in Brooklyn to an immigrant family that came from Russia at the beginning of the last century but because of his family's situation, he never went beyond the 8th grade. My parents, however, made certain that I went to college. This was the way, they told me, that I would secure my thin slice of the "American Dream."

Therefore I was greatly disturbed to watch and listen to Alan Greenspan's testimony when he testified before a hearing conducted by the Senate Judiciary Committee's Subcommittee on Immigration on April 30, 2009 about Comprehensive Immigration Reform. Mr. Greenspan made a statement that included the following excerpt:

"The second bonus would address the increasing concentration of income in this country. Greatly expanding our quotas for the highly skilled would lower wage premiums of skilled over lesser skilled. Skill shortages in America exist because we are shielding our skilled labor force from world competition. Quotas have been substituted for the wage pricing mechanism. In the process, we have created a privileged elite whose incomes are being supported at noncompetitively high levels by immigration quotas on skilled professionals. Eliminating such restrictions would reduce at least some of our income inequality."

In reviewing Mr. Greenspan's testimony I was compelled to review the portion of the INA that deals with the issuance of temporary work visas:

Under the INA, the law "...excludes aliens seeking to immigrate 'for the purpose of performing skilled or unskilled labor,' except that such aliens may be eligible for a visa if: the Secretary of Labor has determined that (A) there are not sufficient United States workers who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and (B) the employment of the alien will not adversely affect the wages and working conditions of the United States workers similarly employed."

Clearly what Mr. Greenspan had called for- the significant increase in quotas or perhaps even the elimination of quotas for temporary work visas to address the "income inequality" between America's skilled and unskilled workers and thereby stop making a "privileged elite" to use his terminology, out of American workers who have skills or education. Mr. Greenspan's stated goals would appear to run contrary to the letter and spirit of the immigration laws concerning foreign workers. His goals would reduce the salaries of American middle class workers.

If our government was to take Mr. Greenspan's advice, there would be no reason for an American student to attend a trade school or even college

USCIS is charged with adjudicating applications filed by aliens seeking to change their status to that of an H-1B visa holder and other categories of temporary nonimmigrant workers. The fact that Senator Charles Schumer who chairs the Immigration Subcommittee in the Senate would hold that hearing and have Mr. Greenspan provide testimony that included such troubling language that reflected a mindset that appears to seek to end the concept of the "American Dream" has left me greatly concerned.

In view of this, I believe it would be of great importance to understand what measures are being taken at USCIS to combat fraud in the H-1B Program not only in terms of the potential impact that this may have on national security but on the way it may well impact the ability of the average American to support himself and his family, especially in this era of double digit unemployment where a record number of Americans are losing their tenuous grip on their position in the "middle class."

It is now estimated that one in six Americans lives below the poverty level and foreclosures are at extremely high levels. Meanwhile in the name of an economic stimulus program our nation has run up a national debt that to my knowledge far and away exceeds any previous national debt level. Foreign workers have one fundamental goal in seeking employment in the United States- to send money back to their families in their home countries. This results in the wiring of tens of billions of dollars out of the United States each and every year. This is money that is not earned by Americans or resident aliens. This is money that is not spent in the United States. This is money that is not invested in the United States. This is money that is utterly removed from our nation's beleaguered economy.

It reminds me, in fact, of an analogous situation where someone turns on the faucets on his bathtub but by leaving the drain open, he never has enough water in his tub to take a bath.

How much effort, therefore is given to making certain that artful attorneys don't aid client companies and foreign workers in locking Americans and lawful immigrant aliens out of jobs they desperately need to stay afloat financially so that the attorneys can get their fees and companies can reduce labor costs to the detriment of the citizens of our country?

The mission of USCIS is comparable to the job of the locksmith who provides the keys to our country to aliens from around the world. The fact is that our nation is a "nation of immigrants" but it is absolutely essential that the process by which aliens seeking a variety of immigration benefits be treated fairly and with dignity. Yet combating fraud must be a major part of the effort of this agency that has serious national security implications.

Combating fraud requires that USCIS and ICE have an adequate number of special agents who can actually locate, investigate and arrest aliens and those who conspire with them to commit immigration fraud. Simply taking down an occasional large scale fraud ring may generate a headline but in order to really have the desired effect, USCIS and ICE must create a program such as the one I participated in more than 35 years ago.

Today it would appear that there is little chance that an alien who engages in a marriage fraud or labor certification fraud will be detected. There is even a slimmer possibility that such criminal activities will result in the prosecution of those involved. This emboldens more aliens and more citizens to enter into criminal conspiracies to game the system. Immigration fraud is certainly not a victimless crime but it is a virtually prosecutionless crime that encourages ever more aliens to game the system and encourages ever more citizens to participate in these schemes to make a quick profit.

It has been said that you only get one opportunity to make a first impression. For hundreds of thousands of aliens who enter our country each year, the first impression they get of the United States of America comes from their contact with the enforcement and administration of the Immigration and Nationality Act. When it becomes virtual common knowledge that our government has no real interest or capability to secure our nation's borders or enforce or administer the immigration laws effectively,

the lesson is that in the United States you can expect to not only get away with violating our laws but you can be expected to be rewarded for violating our laws.

In my humble opinion this is a very dangerous first impression especially in this perilous era where the immigration benefits program administered by USCIS has been gamed repeatedly by criminals and terrorists as an embedding tactic.

It is this concern that compels me to touch on another issue. Today so many of our nation's leaders are openly advocating for a program under the banner of "Comprehensive Immigration Reform" that would provide aliens whose presence in our country represents a violation of law with a pathway to United States citizenship.

There is no way to know the true names or nationalities of these millions of aliens. Consequently there would be no way of determining when, where or how they entered the United States. There would be no way of determining whether these aliens had involvement with criminal or terrorist organizations.

The fact that each application would undergo a "security check" would only catch those aliens whose fingerprints were on file for having committed a criminal offense or had been previously encountered by the immigration system.

An alien who had never been fingerprinted and who provided a false name would easily acquire lawful status and official identity documents under that false name that would immediately enable him (her) to obtain a Social Security Card, a driver's license and all other sorts of identity documents. The identity document that would be provided to an alien under the auspices of "Comprehensive Immigration Reform" would be the ideal "breeder document" and would create a national security nightmare of unprecedented proportions.

The 1986 Amnesty that was supposed to encourage one million to one and a half million aliens to step out of the proverbial "shadows" resulted in approximately four million aliens coming forward to seek legalization including several terrorists among them.

There are a couple of reasons that we wound up with about 3 times as many aliens seeking legalization than were originally estimated. First of all there was apparently some undercounting- either intentional or unintentional. Second- and most importantly- there was absolutely no way of knowing how long an alien has been present in our country if they entered the United States without being inspected. There was no record of that person's entry into the United States.

Today the estimated number of illegal aliens in our country range from a low of 12 million to a high of more than 30 million. If the lowest estimate is correct and if, as happened in 1986 we wind up with 3 times as many aliens stepping forward, then it must be presumed that more than 36 million aliens plus their families will line up for lawful status in our country- making an absolute mockery of the visa program by which aliens have traditionally sought to immigrate to the United States to begin their lives anew in our country. If the actual number of illegal aliens is closer to 30 million, then we are looking at a veritable human tsunami. There is absolutely no way I could imagine that the system could even begin to cope with the onslaught of so many aliens- all of whom are "undocumented" meaning that they do not possess even a shred of reliable official identity documents to attest to their true identities.

As for the current situation at USCIS- if fraud could be deterred in a meaningful way then perhaps the

agency that has, for decades been fixated on chasing the ever increasing backlog to the detriment of the integrity of the process might find the backlog actually shrink as fewer fraudulent applications were filed. This would be, to my thinking, a far more effective way of reducing the backlog of applications while actually increasing the integrity of the process and actually reducing the waiting time for those who file legitimate applications for various benefits including those who seek to share the American Dream and become a part of the tapestry of this magnificent nation.

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
May 11, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Oversight Of U.S. Citizenship And Immigration Services
Senate Judiciary Committee
May 11, 2010

I am glad to have Director Mayorkas with us today. We welcome him to his first appearance before the Judiciary Committee since his confirmation. The U.S. Citizenship and Immigration Services (USCIS) is a principal administrator of our immigration policy. It is charged with determining who is eligible for a wide range of visa categories. It ensures that those who are deemed eligible for an immigration benefit have not filed a fraudulent claim and do not wish to do us harm. The agency allows family members, foreign students, artists, athletes, and investors, among others, to enrich our economy and culture. And most significantly it makes it possible for immigrants to realize their dreams of U.S. citizenship. This agency is the face of our national immigration system. Its efficient administration of rules and standards is crucial to keeping our system strong and reliable.

The agency shoulders a tremendous responsibility, as do all of the men and women who adjudicate visa petitions. As Director, you are responsible for ensuring that a fee-funded agency provides a high quality service while doing everything possible to prevent fraud and abuse in the system. I am proud to say that Vermont is host to one of four national visa processing centers in the United States. The employees at the Vermont Service Center carry out their duties with conviction and tremendous care, and I want to recognize their excellent record.

I have long supported the EB-5 immigrant investor visa, and in particular the EB-5 Regional Center program. The EB-5 program brings significant amounts of capital to economically challenged regions of our country. Most importantly, this program creates jobs for Americans. Entrepreneurs in Vermont have used this program to revitalize businesses, with economic benefits and job creation across entire regions. I intend to introduce legislation soon to modernize this program. Among my priorities, I intend to make the program permanent. My bill will also ensure that as it grows, the program remains free from fraud or abuse.

The USCIS implements the United States' humanitarian policies. I commend your swift actions to implement Secretary Napolitano's announcement that the United States would grant temporary protected status (TPS) for Haitians after the recent earthquake. I hope that you are generously

providing fee waivers for eligible TPS applicants. The agency also acted quickly to welcome Haitian orphans who were adopted by families in the United States. In this same spirit of humanitarian aid, I worked with Senator Lugar on the Return of Talent Act. This bill would allow lawful permanent residents to return to their home countries to assist with reconstruction following a natural disaster or armed conflict, without penalizing a future application for citizenship. If enacted, this legislation could have a positive impact on Haiti's recovery.

Your agency also fulfills our country's historic commitment to refugees and asylum seekers by conducting interviews to determine eligibility for asylum. I recently introduced two bills, the Refugee Opportunity Act and the Refugee Protection Act, both of which strengthen United States' protections for asylees and refugees. These bills will ensure that America upholds its commitments under the Refugee Convention. I look forward to working with you on both pieces of legislation.

I am pleased you are with us today, and I look forward to your testimony and hearing about the recent successes and challenges at your agency.

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U.S. Citizenship and Immigration Services

Testimony

of

ALEJANDRO MAYORKAS

Director

U.S. Citizenship and Immigration Services
Department of Homeland Security

For

A Hearing on

Oversight of U.S. Citizenship and Immigration Services

Before the

Senate Judiciary Committee

May 11, 2010

226 Dirksen Senate Office Building
10:00 AM

Chairman Leahy, Ranking Member Sessions, and Members of the Committee, I appreciate the opportunity to appear before you today to testify about the state of U.S. Citizenship and Immigration Services (USCIS) and to discuss several critical issues important to this Committee.

I am deeply grateful to the Members of this Committee for your continued strong interest in USCIS and your support of its programs. I have appreciated the opportunity to meet with several of you personally since my arrival this past August and to provide responses to letters received from you.

Since joining USCIS, I have witnessed first-hand not only the challenges in managing an effective and efficient immigration services organization, but also the tremendous promise of our mission and the dedication of thousands of employees who administer our nation's immigration laws each day. I fully appreciate that our ability to manage or overcome our challenges and take full advantage of our potential requires close relationships with our partners, including Congress and this Committee in particular.

This morning, I would like to provide you with an overview of key initiatives and accomplishments we at USCIS have undertaken as well as an overview of our current financial condition. Each of the actions we are undertaking relates to our guiding principles of integrity, efficiency, consistency, and transparency. I am a naturalized U.S. citizen whose family came to this country as a result of the communist takeover of Cuba. It is of great personal importance to me that USCIS embodies these principles to become a more effective steward of the resources we receive from the communities we serve, and from Congress. As a former United States Attorney, it is also my priority that USCIS serves as a fair and efficient administrator of our nation's immigration laws.

Operational Excellence in Our Response to the Earthquake in Haiti

Before discussing the details of our current operational activities, I want to first speak briefly about USCIS's response to the tragic January 12, 2010 earthquake in Haiti. The response of our government to the Haitian crisis was swift, decisive, and comprehensive.

Our employees worked long hours, including through weekends, holidays, and the snow storms, to implement Secretary Napolitano's January 18, 2010 announcement of humanitarian parole for certain Haitian orphans in order to allow the orphans to be united with their adoptive families and to receive the care they need. I am proud to report that USCIS has provided travel authorization to 1,089 orphans who qualified for humanitarian parole. USCIS continues to review approximately 350 other cases that are still pending final decision and to provide follow-up information to the families whose children are already here on how to finalize the children's immigration status.

This collective spirit and drive in response to the crisis are perhaps best exemplified by the actions and sacrifice of the USCIS Field Office Director on the ground at the U.S. Embassy in Port-au-Prince, Mr. Pius Bannis. Mr. Bannis worked all hours, providing

food and shelter to children without regard to his own needs, while evaluating and processing travel papers amidst the sweep of crowds that were desperate and scared.

In addition, USCIS employees worked tirelessly here in Washington, DC and throughout the country to build the significant operation necessary for us to extend Temporary Protected Status (TPS) to eligible Haitian nationals in this country. USCIS has received approximately 49,200 application packages for Haitian TPS and accepted approximately 43,600 of these packages for further action. I can provide you and your offices with additional data about the progress of the TPS program should you so desire.

Operational and Financial Priorities

While we are proud of the ability of USCIS to respond admirably and effectively during a time of great crisis, this response has helped us identify additional areas in which management improvements are needed. To a broader extent, I have been working every day with my leadership team to identify areas in which focus is needed across the USCIS operational enterprise. Specifically, I have asked my leadership team to emphasize the need to align our operations with a focus upon the priority principles of transparency, integrity, consistency, and efficiency. These priority principles are now steering our efforts to improve operations and outcomes and help us determine our resource needs. Doing so is particularly important in this currently difficult financial environment.

When I appeared before you in my confirmation hearing, I represented to you that I would conduct a top-to-bottom review of USCIS. After careful study since I took office, in January I realigned our organizational structure to reflect our priorities and to better achieve our goals. As a former United States Attorney, I believe it is imperative that USCIS help safeguard our national security and protect the integrity of our immigration system. As part of the realignment I created a new Fraud Detection and National Security Directorate (FDNS) focused on detecting, combating, and deterring threats to our public safety and fraud in our system. Previously, these functions resided in an office with a wide array of responsibilities. The creation of a separate Directorate that is focused on this critical mission set has elevated the profile of this work within USCIS and already has brought about operational improvements. The elevation of FDNS also emphasizes my commitment to anti-fraud efforts with ICE and other law enforcement partners.

FDNS reports directly to me. We are implementing policies to address fraud in visa and other benefit programs to ensure these programs are not exploited by the undeserving. We are re-tooling our benefit fraud and compliance assessment process to improve its methods, bring added expertise to bear, and enable us to broaden our reliance upon these methods to define operational improvements and the implementation of additional safeguards.

In order to enhance fraud detection and deterrence capabilities, USCIS implemented an Administrative Site Visit and Verification Program (ASVVP) in July 2009. Earlier USCIS fraud studies demonstrated the value of site inspections in detecting and deterring fraud. The ASVVP seeks to augment USCIS nationwide anti-fraud efforts and strengthen the integrity of the United States legal immigration system. This is

accomplished through the use of site inspections aimed at verifying key eligibility requirements such as the existence of the petitioning organization, compatibility of the worker's education and skills with the job offered and the ability or willingness of the petitioning organization to pay the appropriate wage. We are currently conducting site inspections on nonimmigrant and immigrant religious worker and H-1B nonimmigrant employment-based petitions. To date, more than 15,000 site inspections have been performed.

In the fall of 2009, FDNS and USCIS marked a significant accomplishment in our partnership with the Federal Bureau of Investigation (FBI) to eliminate the backlog of responses in the FBI National Name Check Program. Measured against the goal of having responses from the FBI on 98 percent of requests within 90 days and the remaining 2 percent within 180 days, USCIS now receives responses on all cases within 30 days. We view this achievement as a significant step taken toward attaining greater consistency and efficiency in our processes.

We have emphasized transparency through implementation of a robust and improved stakeholder engagement program. Our Office of Public Engagement, which I established this past September, is working to ensure our external partners are included in the consideration of policy and process development, and we are institutionalizing a mechanism to keep customers fully informed of USCIS issues and activities. The Office has already held numerous collaboration sessions with the immigration stakeholder community on a wide variety of topics such as the redesign of the Medical Certification for Disability Exceptions form, the development of a new fee waiver form, enhancing our Request for Evidence (RFE) process, Haitian TPS, and issues affecting vulnerable populations. On Haitian TPS alone, the Office has coordinated more than 180 engagements reaching more than 18,000 individuals.

In another facet of the USCIS realignment, I created the Customer Service Directorate to improve the way in which USCIS provides information and services to the public. One focus of this Directorate is to benchmark the delivery of USCIS service offerings against private industry and other federal agency best practices and incorporate these practices as appropriate.

Contained within the Directorate, the USCIS National Customer Service Center provides information to more than 16 million callers each year. Our Customer Assistance Office receives more than 800 pieces of correspondence each month. Late last year we implemented within only 90 days – at the President's direction – a vastly improved website to improve the ability of USCIS customers to access the information and assistance they need. The redesigned USCIS.gov website – which has a parallel website for Spanish-speaking customers – is more customer-centric, providing a “one-stop shop” for immigration services and information. We receive more than 2 million case status inquiries each quarter via the site. Customers are now able to receive real-time information regarding their case status, obtain office-specific processing times and opt to receive a text message when their status changes. Language is clearer, customer service tools are more accessible, and navigation through the website is simplified.

In addition, the Customer Service Directorate has implemented and continues to provide enhancements to My Case Status Online, which provides customers with direct access to case status information. Future improvements include the review of our current routing strategies to ensure that customers who contact the National Customer Service Center speak with the appropriate individuals within USCIS to resolve their inquiries. We are also planning to implement additional self-service tools via the web, which, for some inquiry types, will allow USCIS customers to correspond with us electronically without calling the National Customer Service Center or visiting a local office.

This week, USCIS issued a re-designed Permanent Resident Card (Green Card), which modernizes the Green Card with the most sophisticated security technology available to us today. The previous Permanent Resident Card was designed and placed into service in 1998, and only minor changes had been made to the card since that time. This new card includes additional security features, including embedded data and holographs, which make it more difficult to produce fraudulent cards and easier for DHS to identify fraud.

With respect to efficiency, and consistent with Secretary Napolitano's Department-wide Efficiency Review, USCIS has implemented several cost-cutting measures. We have developed several commonsense plans to reduce non-mission critical travel, subscriptions and printing; maximizing the use of government space for meetings; and improving utilization of refurbished information technology. USCIS has also issued a reduction in centrally located training that will help reduce associated travel costs.

USCIS has also undertaken a Balanced Workforce Strategy, also consistent with a Department-wide initiative, to help USCIS reduce workforce-related costs over time. We have begun the process of validating the conversion of numerous contract positions to federal staff. Such measures are necessary as a matter of efficiency and responsible stewardship. Our stewardship of public resources is particularly important given the funding challenges currently facing USCIS.

In Fiscal Year (FY) 2009 USCIS experienced a marked decline in revenue. Revenue declined 15 percent -- a drop of approximately \$345 million -- from the estimate in the fiscal year 2007 fee rule. While revenue appears to have stabilized, we have not seen a material increase in total filing volumes for fiscal year 2010.

When I learned of our budget shortfall shortly after my arrival, I immediately called for an exhaustive and vigorous review of the USCIS Annual Operating Plan (AOP) to identify budget cuts that could be undertaken. The review remains underway and already we have identified savings exceeding \$160 million. Regrettably, these cuts may impact programs we expected would produce greater system efficiencies, including some identified in our 2007 fee rule. Additionally, USCIS undertook a comprehensive fee study to assess whether immigration fees were set at an appropriate level to fully recover the costs associated with providing benefits and services. The results of this study along with our review of the AOP are included in a proposed fee rule currently under review.

We are grateful for the \$224 million appropriation we received from Congress in FY 2010, including the significant new funding to expand and improve E-Verify and build upon our important collective work to successfully integrate immigrants into our

communities. Congress also appropriated funding toward addressing cross-subsidization of fees, charging higher fees for some applicants to cover the costs of other programs. In FY 2010, Congress provided resources for our military naturalizations, asylum, and refugee programs. The costs of these programs had previously been applied as surcharges on the fees of applicants for other immigration benefits. The FY 2011 budget request seeks a \$207 million appropriation that would eliminate this surcharge entirely. As mentioned, USCIS is working to publish a rule on this issue during the fourth quarter of this year. In addition to the results of the fee study this rule reflects the elimination of the asylum and refugee surcharge from application and petition fees.

The Chief Financial Officer's Act of 1990 requires us to undertake a fee study on a biannual basis. The USCIS financial condition also compels us to examine every option available to address our financial state, including potential changes to the amounts we charge for our services. In reviewing these options, we understand that the communities we serve include individuals who are not of significant financial means. This concern is made more acute by the magnitude of the fee increase two and a half years ago. We are making every effort to account for these concerns within the parameters of our difficult financial circumstances. I look forward to further discussion of the results of the fee study once it is published later this year.

While we make these difficult budget cuts and carefully measure the results of the fee study, we are undertaking quality improvements in the administration of the immigration system. Processing times for application and petition workload continue to be one important indicator of performance and we are proud of the reduction in processing times we have achieved thus far. With few exceptions, processing times currently are equal or better than the standards set in our 2007 fee rule.

From the first month of the fee increase in August 2007 through the end of the fiscal year in September 2009, the average cycle time for all form types decreased approximately 24 percent. These reduced processing times were made possible primarily by the increase in staffing afforded by the 2007 fee increase. Some of the most significant reductions include the following:

- Reduction of the cycle time for the Form N-400, application for naturalization, from 10.6 months to 4.1 months, which is below the projected goal of 5 months. In addition, the military N-400 cycle time was reduced to 3.5 months, also below projections;
- Reduction of the processing time for the Form I-485, application to register permanent resident or adjust status, from 10.8 months to 4.4 months (with a anticipated further reduction to 4 months);
- Reduction of the processing cycle time of the Form I-90, application to replace permanent resident card, from 3.4 months to 2.5 months; and,
- Reduction of the processing cycle time of the Form I-140, immigrant petition for alien worker, from 5.7 months to 3 months.

A comparison of the USCIS regions and service centers also reveals that we have achieved consistent cycle times across form types; indeed, for offices that adjudicate similar cases, the cycle times for most form types are now within days of each other.

Even in the face of the challenges noted, we have made vast improvements in both customer service and reduced processing times and in many of our other programs. I would like to highlight our recent policy outreach initiative, the efforts of our E-Verify Program, the developments in our EB-5 program, the successes in Refugee Processing and Military Naturalizations, the Citizenship Integration Grant program, and the next steps of the USCIS Transformation program.

USCIS Policy Review

The uniform application and interpretation of policies across USCIS is crucial to our mission of providing the public with the highest possible level of service. To enhance consistency and integrity, we are undertaking a complete, *de novo* review of all policy and operational guidance in effect across USCIS. This initiative will enable USCIS to ensure the consistent application of policies across all our domestic and international offices. I am pleased to note that this policy review also includes two online surveys requesting feedback from our employees and external stakeholders, including Congressional staff, on prioritizing the policies being reviewed.

In the two weeks it was available, USCIS received a total of 5,675 responses to the public USCIS Policy Review Survey. 108 of these responses were from the Spanish-language survey USCIS posted on its Spanish site. Internally, 2,365 participated in the USCIS Internal Policy Review Survey. This was a USCIS record for employee participation in any survey. We will continue to examine our policies and operations to ensure consistency becomes a hallmark of our operations, including the adjudication process.

E-Verify

E-Verify is a critical program that enables USCIS and more broadly, the Department of Homeland Security (DHS), to encourage and assist employers in complying with our immigration laws. E-Verify is a free, easy-to-use web-based system—operated by USCIS with the support of the Social Security Administration—that allows participating employers to electronically verify the employment eligibility of newly hired employees. We are doing everything we can not only to optimize performance of the system but also to ensure its integrity and accuracy, improve ease of use, and expand customer services. I am committed to building on the success of this program, which continues to enroll approximately 1,400 new employers per week in addition to the more than 200,000 employers already enrolled, covering more than 740,000 worksites.

During a recent study of data from a three-month period in 2008, the Westat Corporation found that E-Verify's accuracy continues to improve. In this evaluation, Westat found that in approximately 96 percent of the cases, the E-Verify findings were consistent with the workers' true employment authorization status. Further, the study found that of the total cases submitted to E-Verify, 6.2 percent of the workers were actually unauthorized and, of that subset, E-Verify correctly detected approximately half as unauthorized. The remainder went

undetected by E-Verify, primarily as a result of identity fraud. The study concluded that this rate is not surprising in light of E-Verify's current limited ability to detect identity fraud.

We are working hard to improve E-Verify's ability to detect identity fraud. USCIS has already added DHS-issued photos to the system, allowing for a biometric comparison for authorized workers and we are in the process of adding passport photos to E-Verify's Photo Tool. We have also significantly enhanced our capabilities to monitor system use for evidence of identity fraud. However, even with these steps it is important to understand the limitations placed on the current system. The largest pool of available biometrics is state driver's license photos. Access to these photos would improve E-Verify's ability to effectively combat identity fraud. However, even with this limitation we are also examining other biometric and biographic options to further strengthen verification of employees and to reduce misuse, fraud, identity theft and abuse.

It is important to note that E-Verify is but one tool USCIS and the Department employ to ensure a lawful workforce. USCIS is working this year and in FY 2011 to implement a series of improvements consistent with the \$30 million in two-year funding that Congress provided in the FY 2010 appropriations bill. E-Verify system algorithms are being improved for better data matching in order to continue to reduce inaccurate initial results. USCIS is also developing Self-Check functionality within E-Verify to help employees proactively identify and resolve data issues outside of the hiring process that could help prevent data mismatches with the E-Verify system.

EB-5

The EB-5 Immigrant Investor Program administered by USCIS seeks to stimulate employment creation in the United States through promotion of foreign national capital investment into the U.S. economy. In recent years, the EB-5 program has achieved increased success in enhancing the numbers of participants as well as improving our processing times. The EB-5 program may be utilized for the purpose of creating either new commercial enterprises or to assist existing troubled U.S. businesses.

Currently, each foreign investor who participates in the EB-5 program must invest either \$1,000,000 or \$500,000 in targeted employment areas into a U.S. enterprise. Such investment must create at least 10 full-time jobs for U.S. citizens or immigrants lawfully authorized to be employed in the United States.

Under a pilot immigration program first enacted in 1992 and regularly reauthorized since then, certain EB-5 visas are also set aside for investors in Regional Centers designated by USCIS based on proposals for promoting economic growth. Regional Center Pilot Program investors may establish eligibility by showing indirect rather than direct creation of the necessary jobs. Once a Regional Center is approved, the individual investor still files the necessary petition, but the process is simplified because the business and investment plans have already been reviewed. The program is an increasing success with 84 currently approved and active Regional Centers in 31 different U.S. jurisdictions, including the District of Columbia and Guam.

In addition to the increased number of Regional Centers, USCIS has also seen significant improvement in its processing times of EB-5 petitions. The current cycle time for Regional Center Proposal Adjudication has been reduced from 14 months to 4 months in FY 2008. The current cycle time for I-526s (Petition as an Alien Investor) is now less than five months down from 7.5 months in FY 2008.

USCIS has also expanded its efforts to make our EB-5 process more transparent and open to our stakeholders and those seeking to do business with us. USCIS has held quarterly meetings with EB-5 external stakeholders in FY 2009 and during the first quarter of 2010. In addition, USCIS is pursuing liaison activities with the Department of Commerce, International Trade Administration (Invest in America) to determine how to promote and further streamline the adjudication process of the EB-5 program.

As an example of this transparency and streamlining, USCIS recently published a memorandum regarding the EB-5 Program that addresses a wide variety of issues, providing a transparent set of expectations and clarity to USCIS adjudicators as well as to stakeholders and investors. Frequently asked questions regarding EB-5 are now being developed that will be posted on the USCIS website. We have also revised and published updated program information on the EB-5 portion of the USCIS website.

Furthermore, USCIS has drafted a new form for Regional Center proposals and amendments including a fee study. The new Form I-924 will standardize the adjudication of Regional Center proposals and provide clear processing instructions to the public.

I am also pleased to note that, as the below table indicates, the EB-5 visa issuance increased exponentially in FY 2009, which reflects the current success of the program.

Fiscal Year	Total EB-5 Visas issued
FY 2009	4,218
FY 2008	1,360
FY 2007	806
FY 2006	744

Military Naturalizations

I am also pleased to update you on the continued success of our Military Naturalization program. USCIS recognizes the important sacrifices made by non-U.S. citizen members of our armed forces and their families. We are committed to processing their naturalization applications in a timely and efficient manner, providing exemplary customer service, and fulfilling our mission with integrity.

Since 2008, USCIS domestic field offices have conducted over 11,000 outreach activities on military installations to help members of the armed forces and their families. These activities include conducting "Immigration 101" seminars, on-site interviews and collection of biometrics, and naturalization oath ceremonies. USCIS has naturalized more than 58,300 service men and women since September 2001, both stateside and in

overseas locations including Iraq and Afghanistan. In FY 2009, USCIS naturalized more than 10,500 service members, 8,850 in the United States and 1,655 overseas.

In August 2009, USCIS and the United States Army launched the *Naturalization at Basic Training Initiative*, a program that gives non-citizen enlistees an opportunity to naturalize immediately preceding the completion of basic training. This unique initiative benefits both the Department of Defense and USCIS by affording service members the earliest possible opportunity to become U.S. citizens. As a result, military families are in a better position to pursue available immigration benefits, which promotes family unity and military readiness. USCIS is reaching out to all other service branches to expand this initiative by the end of this year.

Refugee Processing Activities Abroad

In addition to our work to respond to the crisis in Haiti, USCIS, as the principal DHS component in the U.S. Refugee Admissions Program (USRAP), is committed to fulfilling its humanitarian mission to provide resettlement opportunities to qualified refugees around the globe while ensuring the integrity of the program and our national security.

In FY 2009, through close collaboration with the Department of State and other USRAP partners, USCIS devoted the resources necessary to meet the President's allocated admissions level of 75,000 so that the United States admitted 74,652 refugees, the highest level of refugee admissions in a decade. To achieve this, USCIS nearly doubled its Refugee Corps staff and deployed USCIS officers to 79 countries to interview more than 110,000 refugee applicants from 64 nations. In addition, while striving to accomplish its refugee processing goals, USCIS worked tirelessly to support our national security mission through the development of enhanced security protocols, a quality assurance program, anti-fraud measures and transparent refugee program policies and procedures. By adopting a strong, unequivocal position on fraud and national security, we have been able to ensure that precious resettlement opportunities remain available to those truly in need.

While the refugee program is always subject to unexpected events such as volatile security situations, disease outbreaks, and host country processing limitations, the success of the program in FY 2009 established a strong foundation for processing activities this fiscal year. In the first half of FY 2010, USCIS interviewed nearly 50,000 refugee applicants, supporting the admission of 35,831 refugees -- an increase in admissions of 20 percent as compared to the same time last year. USCIS is committed to devoting the resources necessary to ensure the success and integrity of the program in the years to come.

Citizenship and Integration Grant Program

Improvement of services to customers also includes the recent announcement of the FY 2010 Citizenship and Integration Grant Program. This program, led by the USCIS Office of Citizenship, provides two competitive grant opportunities designed to help prepare lawful permanent residents (LPRs) for citizenship. The funding will expand existing programs, build new capacity to prepare immigrants on the path to citizenship, and help them gain the

knowledge necessary to become successful citizens. USCIS will also continue to fund integration tools to enhance English language learning, expand the capacity of volunteers to prepare immigrants for citizenship, improve access to information on citizenship education opportunities and resources, and fund a citizenship-focused public awareness effort.

I expect that through our efforts in FY 2009, those being planned for this year, and those continuing in FY 2011; we will be well-positioned to support organizations providing resources to underserved immigrant communities to achieve better integration of immigrants into our nation. In FY 2009, we awarded 13 separate grants totaling \$1.2 million. In FY 2010, I expect USCIS to award upwards of 50 separate grants totaling an estimated \$7 million. We have developed a rigorous grant review and evaluation process to ensure this important investment will benefit not only those directly receiving services, but the nation as a whole.

Transformation

Finally, no project is more important to near-and long-term operational improvement and efficiency than our Transformation initiative, a USCIS-wide effort to modernize the way we do our work each and every day. This Committee has heard about USCIS Transformation for the last several years with very few visible results to date. I share the disappointment of those who would expect to see this effort further along. I am pleased to note, however, that our Transformation program is proceeding on a carefully developed path that is mindful of the challenges that lay ahead and is focused on avoiding the customary mistakes that typically afflict large transformational projects.

For much of the last year of the Transformation program, USCIS and its key contractor have focused on the critical project management and enterprise architecture planning efforts that are necessary for long-term program success. That planning resulted in a significant shift in the Transformation program's deployment strategy among immigration benefit types. Specifically, we are re-sequencing the schedule to focus efforts first on non-immigrant benefit types, resulting in a process that follows the natural immigration lifecycle and will enable the earlier use of electronic adjudications. This will strengthen the impact of the first deployment and immediately show a clear tie to mission results.

Our operating plan for FY 2010 budgeted more than \$322 million for the Transformation program and related activities. We are still working to finalize a revised program plan for FY 2011. The budget request provides \$164 million in estimated new premium processing fee revenue for Transformation in FY 2011.

Several of the challenges in our Transformation program have been documented by our federal partners in the Government Accountability Office (GAO) and the Department's Office of the Inspector General (OIG). We have worked closely with these offices to address their recommendations and are continuing to seek their assistance through an ongoing collaborative partnership.

The most recent feedback from the OIG in late November 2009 requested that USCIS update its strategic approach to communicate the end-state business processes and technology solutions to stakeholders, to include development and implementation of

plans to ensure sufficient and consistent stakeholder participation in the reengineering of the USCIS process.

USCIS has updated its outreach plan to reflect the newly defined Transformation efforts for this next stage of our process. Our efforts include aggressive implementation strategies to prepare internal and external stakeholders for change, enlist stakeholders in solution development, and integrate the "stakeholder voice" into the Transformation efforts. USCIS has also developed a series of key action items designed to inform internal and external stakeholders at strategic intervals to maintain consistent awareness and interest. This engagement began earlier this month and will continue as we develop the next phases of this program.

The Transformation program, while on a better path, will require continuous and intense management review, especially during these next development stages, to ensure optimal functionality will be delivered on time and within budget. Transformation cannot, and will not, proceed without input and significant participation from our employees, our customers, and our other stakeholders, including Congress.

Challenges and Path Forward

USCIS has made significant improvements in protecting our national security and combating fraud, customer service, fiscal responsibility, reduced processing times, and engagement with the public we serve. At the same time, USCIS continues to face significant challenges that we are working to overcome. There is a great deal to do but there is a great deal we can do. I am committed to maintaining a strong focus on improving our performance in all program areas, even in the face of fiscal challenges. We must be even more efficient out of respect for the customers who pay fees and the taxpayers who support our operations, and we must enhance the customer service we provide. USCIS activities must become more transparent than they have been, and we need to continue to work closely with our stakeholders and the public at large to collaborate on the outcomes we collectively want and need to achieve.

On behalf of USCIS, I greatly appreciate your support of our efforts. I look forward to working with you on these and other matters critical to our immigration system and the work of USCIS. I would be happy to answer any questions you may have.

